MONTANA LEGISLATIVE HISTORY

Chapter 548 1997

Bill H 252 S _____ Original bill & history ✓ C

H. Committee on Business & Labor

Hearing Date(s) Feb 07 ✓ C

Feb 19 ✓ C

_____ C

_____ C

Date Out _____ C

S. Committee on Labor & Employment Relations

Hearing Date(s) Mar 13 ✓ C

Mar 20 ✓ C

Mar 27 ✓ C

_____ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

a free Conference Committee

Apr 18

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

4/05	3RD READING PASSED	64	35
	TRANSMITTED TO SENATE		
	DIED IN PROCESS		

HB 250 INTRODUCED BY COBB, ET AL. *LC0434 DRAFTER: PETESCH*

ADOPT THE UNIFORM HEALTH CARE DECISIONS ACT WITH CERTAIN REVISIONS

1/14	INTRODUCED		
1/14	FIRST READING		
1/14	REFERRED TO HUMAN SERVICES & AGING		
1/29	HEARING		
1/31	TABLED IN COMMITTEE		
2/27	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HB 251 INTRODUCED BY HOLLAND, ET AL. *LC0727 DRAFTER: LANE*

PROVIDE THAT IN CIVIL ACTIONS, THE COURT MAY ASSESS THE REASONABLE PUBLIC EXPENSES OF IMPANELING THE JURY IF THE COURT OR THE JURY DETERMINES THE CASE OF A PARTY TO BE FRIVOLOUS OR MAINTAINED FOR PURPOSES OF HARASSMENT

1/14	INTRODUCED		
1/14	FIRST READING		
1/14	REFERRED TO JUDICIARY		
1/14	FISCAL NOTE REQUESTED		
1/17	FISCAL NOTE RECEIVED		
1/18	FISCAL NOTE PRINTED		
2/03	HEARING		
2/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/10	2ND READING PASSED	99	0
2/11	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO JUDICIARY		
3/12	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/15	2ND READING CONCURRED AS AMENDED	36	11
3/17	3RD READING CONCURRED	37	13
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	91	7
4/11	3RD READING CONCURRED AS AMENDED	96	1
4/15	SIGNED BY SPEAKER		
4/17	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 356		
	EFFECTIVE DATE: 10/01/97		

HB 252 INTRODUCED BY MOLNAR, ET AL. *LC0623 DRAFTER: PETESCH*

REVISE THE LAWS GOVERNING CONTRACTORS AND INDEPENDENT CONTRACTORS

1/14	INTRODUCED
1/14	FIRST READING
1/14	REFERRED TO BUSINESS & LABOR
1/14	FISCAL NOTE REQUESTED (EXTENSION GIVEN FOR COMPLETION)
1/22	FISCAL NOTE RECEIVED

1/30	FISCAL NOTE PRINTED		
2/07	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASSED	61	39
2/26	3RD READING PASSED	63	37
	TRANSMITTED TO SENATE		
3/03	FIRST READING		
3/03	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/07	REVISED FISCAL NOTE REQUESTED		
3/13	HEARING		
3/13	REVISED FISCAL NOTE RECEIVED		
3/18	REVISED FISCAL NOTE PRINTED		
3/20	TABLED IN COMMITTEE		
3/27	HEARING		
3/28	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	REVISED FISCAL NOTE REQUESTED		
4/07	2ND READING CONCURRED	45	4
4/08	3RD READING CONCURRED	47	3
	RETURNED TO HOUSE WITH AMENDMENTS		
4/14	REVISED FISCAL NOTE PRINTED		
4/15	2ND READING AMENDMENTS NOT CONCURRED	56	42
4/15	CONFERENCE COMMITTEE APPOINTED		
4/16	HEARING		
4/17	CONFERENCE COMMITTEE DISSOLVED		
4/17	FREE CONFERENCE COMMITTEE APPOINTED		
4/18	HEARING		
4/19	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/19	MOTION TO ADOPT FREE CONFERENCE COMMITTEE REPORT NO. 1 ON 2ND READING FAILED	44	52
4/21	HEARING		
4/21	HEARING		
4/21	FREE CONFERENCE COMMITTEE REPORT NO. 2		
4/21	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 2 ADOPTED	54	46
4/21	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 2 ADOPTED	55	45
4/22	MOTION FAILED TO RECONSIDER ACTION & PLACE BACK ON 3RD READING	45	51
	SENATE		
4/16	CONFERENCE COMMITTEE APPOINTED		
4/17	CONFERENCE COMMITTEE DISSOLVED		
4/17	FREE CONFERENCE COMMITTEE APPOINTED		
4/19	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/19	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	36	11
4/21	FREE CONFERENCE COMMITTEE REPORT NO. 2		
4/21	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 2 ADOPTED	43	5
4/21	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 2 ADOPTED	43	6
4/30	SIGNED BY SPEAKER		
5/02	SIGNED BY PRESIDENT		
5/02	TRANSMITTED TO GOVERNOR		
5/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 548		
	EFFECTIVE DATE: 07/01/97		

House BILL NO. 252

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS AND INDEPENDENT CONTRACTORS; REPEALING CONTRACTOR REGISTRATION REQUIREMENTS; ELIMINATING BONDING REQUIREMENTS FOR CONTRACTORS; REQUIRING THE REFUND OF CONTRACTOR REGISTRATION FEES; AMENDING SECTIONS 39-71-118, 39-71-120, 39-71-401, AND 39-71-405, MCA; REPEALING SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, 39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, AND 39-9-410, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term "employee" or "worker" means:

(a) each person in this state, ~~including a contractor~~ other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under state or federal vocational training program, whether or not under an appointment or contract of hire with

an employer, as defined in this chapter, and whether or not receiving payment from a third party. Ho this subsection does not apply to students enrolled in vocational training programs, as outlined subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as defined in subsection (1)(b), performing community for a nonprofit organization or association or for a federal, state, or local government entity under order, or an order from a hearings officer as a result of a probation or parole violation, whether or no appointment or contract of hire with an employer, as defined in this chapter, and whether or not re payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 a impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Tit chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of comm service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1- and

(g) a person who is an enrolled member of a volunteer fire department as described in 7-33- or a person who provides ambulance services under Title 7, chapter 34, part 1.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not perfor prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ti permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation those services other than meals, lodging, or the use of the recreational facilities; or

(c) performing services as a volunteer, except for a person who is otherwise entitled to cover under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who perfo services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defi in 39-71-123.

(3) With the approval of the insurer, an employer may elect to include as an employee under

provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subje the minimum and maximum limitations of this subsection. For premium ratemaking and for determination of the weekly wage for weekly compensation benefits, the electing employer may elec less than $200 a week and not more than 1 1/2 times the average weekly wage, as defined in this cha

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protec or the county commissioners or trustees for a fire service area may elect to include as an employee w the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives wor compensation coverage under this section may not receive disability benefits under Title 19, chapte

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wa

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose servi are furnished by a person, association, contractor, firm, limited liability company, or corporation, other a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under control and employment of the employer. This presumption may be rebutted as provided in 39-71-117

(9) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this st on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction indust as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and who employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(10) An insurer may require coverage for all nonresident employees of a Montana employer w do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election und

subsection (9)(d)."

Section 2. Section 39-71-120, MCA, is amended to read:

"**39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under the contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business~~; and~~

~~(c) has received an exemption granted under 39-71-401(3)~~.

(2) An individual performing services for remuneration who represents to the public that the individual is an independent contractor is considered to be an independent contractor and not an employee under this chapter ~~unless the requirements of subsection (1) are met~~. An individual representing to the public that the individual is an independent contractor may not make claims against an employing unit. The department may not take action against a person relying on a claim of independent contractor status pursuant to this subsection.

(3) The department may not adopt rules to implement this section."

Section 3. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be

claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, or working members member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of r regulation;

(f) employment of a direct seller as defined in 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is prov under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, ex employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construc work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athl event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or free-lance correspond if the person performing the services or a parent or guardian of the person performing the services in case of a minor has acknowledged in writing that the person performing the services and the services not covered. As used in this subsection, "free-lance correspondent" is a person who submits article photographs for publication and is paid by the article or by the photograph. As used in this subsec "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main du carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member or an association, busin corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, wh business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey performing under a license issued by the board of horseracing from time the jockey reports to the scale room prior to a race through the time the jockey is weighed out a

race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, hat the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be laimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in egotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather han on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited iability company who qualifies under one or more of the following provisions:

(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the imited liability company and does not receive any pay from the corporation or the limited liability company or performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the nited liability company;

(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation r owns 20% or more of the limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, laughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the umber of shares of stock in the corporation or who owns 20% or more of the limited liability company.

(3) (a) A sole proprietor, a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. , 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There s no fee for the initial application. Any subsequent application must be accompanied by a $25 application ee. The application fee must be deposited in the administration fund established in 39-71-201 to offset

the costs of administering the program.

(c) When an application is approved by the department or when the contracting parties agr an independent contractor status, it is conclusive as to the status of an independent contractor precludes the applicant from obtaining benefits under this chapter.

(d) ~~The exemption, if approved, remains in effect for 1 year following the date of the departm approval. To maintain the independent contractor status, an independent contractor shall annually su a renewal application. A renewal application must be submitted for all independent contractor exemp approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal applicatio must be received by the department at least 30 days prior to the anniversary date of the previ approved exemption.~~ When an election of an exemption is approved by the department, the elec remains effective and the independent contractor retains the status of an independent contractor unti independent contractor notifies the department of any change in status and provides a description of independent contractor's present work status.

(e) A person who purposely makes a false statement or misrepresentation concerning that perso status as an exempt independent contractor is subject to a civil penalty of $1,000. The department m impose the penalty for each false statement or misrepresentation. The penalty must be paid to uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this sect

(f) If the department denies the application for exemption, the applicant may contest the denia petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance w the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage fo employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a pri corporation, or a manager-managed limited liability company may elect coverage for its corporate offic or managers, who are otherwise exempt under subsection (2), by giving a written notice in the follow manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1 delivering the notice to the board of directors of the corporation or to the management organization of manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3

delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 4. Section 39-71-405, MCA, is amended to read:

"**39-71-405. Liability of employer who contracts work out.** (1) An employer who contracts with a contractor or an independent contractor to have work performed of a kind ~~which~~ that is a regular or a recurrent part of the work of the trade, business, occupation, or profession of ~~such~~ the employer is not liable for the payment of benefits under this chapter to the employees of the contractor or to the independent contractor if the contractor or independent contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. ~~Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.~~

(2) ~~Where~~ When an employer contracts to have any work ~~to be~~ done by a contractor ~~other than~~ or an independent contractor, ~~and the work so contracted to be done is a part or process in the trade or~~

~~business of the employer, then~~ the employer is not liable to pay ~~all~~ benefits under this chapter ~~to the~~ ~~extent as if the work were done without the intervention of the contractor, and the work so contra~~ ~~be done shall not be construed to be casual employment~~ even if the work contracted to be done is or process in the trade, business, occupation, or profession of the employer. ~~Where~~ When an em contracts work to be done as specified in this subsection, the contractor and the contractor's emp ~~shall~~ may not come under that plan of compensation adopted by the employer.

(3) ~~Where~~ When an employer contracts any work to be done, wholly or in part for the em by an independent contractor, ~~where~~ and the work ~~so~~ contracted to be done is casual employmen ~~such~~ the employer, then the contractor ~~shall become the~~ is not an employer for the purposes chapter."

NEW SECTION. **Section 5. Fee refund.** The department of labor and industry shall refund collected under the provisions of former 39-9-206.

NEW SECTION. **Section 6. Repealer.** Sections 39-3-701, 39-3-702, 39-3-703, 39- 39-3-706, 39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39- 39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39- 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, and 39-9-410, MCA, are repealed.

NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 1997.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0252, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising the laws governing contractors and independent contractors; repealing contractor registration requirements; eliminating bonding requirements for contractors; requiring the refund of contractor registration fees.

ASSUMPTIONS:
1. Repealer would completely eliminate contractor registration funding and responsibilities for the Legal Bureau and Hearings Bureau within the Legal/Centralized Services Division. The injunction placed on the Department of Labor and Industry from enforcing this law leaves the department free of any unsettled legal issues requiring an identified workload.
2. Section 3, subsection (3)(d) contemplates perpetual duration of an independent contractor (IC) exemption, until the department is notified of a change. This provision renders the $25 "subsequent application" fee in (3)(b) meaningless. Since no one will have to renew, the department assumes that the fees mentioned in (3)(b) will not be collected. Section (3)(b) states that the department is expected to determine independent contractor status for individuals and is required to use funding from the Workers' Compensation Administrative fund (fund established in 39-71-201, MCA). Any fees collected would be deposited in the Workers' Compensation Administrative fund.
3. The department assumes that the restriction on rulemaking applies only to Section 2 (39-71-120, MCA. Independent contractor defined). Existing rules will have to be amended or repealed to remove any rule that implements this section.

Unemployment Insurance (UI) Division:
4. It is possible that wages reported by employing entities would decrease as individuals that are currently determined to be employees may become independent contractors. A reduction in wages reported by employers may reduce the amount of taxes paid by employers which in turn could have a negative impact to the UI trust fund.
5. There is no data available to determine the fiscal impact because the number of decreasing employing entities can not be determined.
6. Individuals who are independent contractors would still be able to file a claim for UI benefits and receive a determination of eligibility as outlined in 39-51-2402, MCA.

Employment Relations Division:
7. This legislation would eliminate the contractor registration (CR) process as created by the 1995 Legislature.
8. Section 5 of this legislation requires the department to refund all CR fees collected under 39-9-206, MCA. The CR program utilizes its funds for salaries, benefits and operations, and has no other fund reserve. There would be no cash from this fund source available for such a refund. Implementation of the refund portion of this legislation would, therefore, require another resource, for example general fund. Assuming the refund period to be in fiscal 1998, and with the $490,765 collected in fees in fiscal 1996 and projected fee revenue of as much as $640,000 in fiscal 1997, general fund of $1,130,765 would be required in fiscal 1998 to accomplish the fee refund.
9. In order for each registered contractor to receive a fee refund, the existing CR staff would: 1) cease cashing registration fees and return unprocessed fees and applications; and 2) identify and mail back fees collected in fiscal 1995 and 1996. It estimated that it would take three staff one month in fiscal 1998 to close files and mail back fee refunds, at a cost of $22,611 (personal services, $7,478; operating expenses, $15,133) from the general fund.

(Continued)

Dave Lewis 1-22-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BRAD MOLNAR, PRIMARY SPONSOR DATE

10. Contractor registration funding was identified to support administrative costs for the Employment Relations Division. If this funding source disappears, division administration costs still exist and funding of $125,923 for fiscal 1998 and $117,166 for fiscal 1999 would be reapportioned over all funding sources of the division.
11. Independent contractor exemption funding was identified to support division administration costs which still exist. The representative share of division administration costs related to IC would be funded by Workers' Compensation Administrative Fund (02455). See assumption two.

FISCAL IMPACT:

Expenditures:	FY98 Difference	FY99 Difference
Legal/Centralized Services Division		
FTE	(3.00)	(3.00)
Personal Services	(110,033)	(110,097)
Operating	(48,286)	(48,046)
Equipment	(2,613)	(772)
Total	(160,932)	(158,915)
Employment Relations Division		
FTE	(7.25)	(7.50)
Personal Services	(225,562)	(233,562)
Operating	(22,728)	(37,339)
Equipment	(4,812)	(4,812)
Refunds	1,130,765	0
Total	877,663	(275,713)
Total - Department of Labor and Industry		
FTE	(10.25)	(10.50)
Expenditures	716,731	(434,628)
Funding:		
General Fund (01)Refund Process	22,611	0
General Fund (01)Fees refunded	1,130,765	0
SSR (02)(Contractor Registration)	(436,645)	(434,628)
SSR (02)(for Admin. of CR-02346)	(125,923)	(117,666)
SSR (02)(ESA-02258)	14,740	13,399
SSR (WCA-02455)	72,719	67,703
FSR (03) (DLI Fed Fund-03128)	1,946	1,769
FSR (03)(Fed Safety Fnds-03130)	1,402	1,274
FSR (03)(Fed MSHA-03195)	2,813	2,557
Prop(06)(SIF Adm-06041)	443	403
Prop(06)(UEF Adm-06055)	31,860	30,561
SSR (02)(IC Exemption -02091)	(216,475)	(213,236)
SSR (02)(WCA-02455)	216,475	213,236
Total	716,731	(434,628)
Revenues:		
SSR (02)(CR-02346)	(600,000)	(600,000)
SSR (02)(IC Exemption-02091)	(216,475)	(213,236)
SSR (02)(WCA-02455)	216,475	213,236
Net Impact on Fund Balance: (Revenue minus expense)		
General Fund (01)	(1,153,396)	0

TECHNICAL NOTES:
Repeal of 39-3-703, MCA, removes the requirement that electrical contractors registered with the State Electrical Board be required to obtain a contractor bond for wages and benefits.

The term "employing unit" contained in Section 2 is not defined in the Workers' Compensation Act.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0252, third reading

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising the laws governing contractors and independent contractors; repealing contractor registration requirements; eliminating bonding requirements for contractors.

ASSUMPTIONS:

1. Repealer would completely eliminate contractor registration funding and responsibilities for the Legal Bureau and Hearings Bureau within the Legal/Centralized Services Division. The injunction placed on the Department of Labor and Industry from enforcing this law leaves the department free of any unsettled legal issues requiring an identified workload.
2. Section 3, subsection (3)(d) contemplates perpetual duration of an independent contractor (IC) exemption, until the department is notified of a change. This provision renders the $25 "subsequent application" fee in (3)(b) meaningless. Since no one will have to renew, the department assumes that the fees mentioned in (3)(b) will not be collected. Section (3)(b) states that the department is expected to determine independent contractor status for individuals and is required to use funding from the Workers' Compensation administrative fund (fund established in 39-71-201, MCA). Any fees collected would be deposited in the Workers' Compensation Administrative fund.
3. The department assumes that the restriction on rulemaking applies only to Section 2 (39-71-120, MCA, independent contractor defined). Existing rules will have to be amended or repealed to remove any rule that implements this section.

Unemployment Insurance (UI) Division:

4. It is possible that wages reported by employing entities would decrease as individuals who are currently determined to be employees may become independent contractors. A reduction in wages reported by employers may reduce the amount of taxes paid by employers which in turn could have a negative impact to the UI trust fund.
5. There is no data available to determine the fiscal impact because the number of decreasing employing entities can not be determined.
6. Individuals who are independent contractors would still be able to file a claim for UI benefits and receive a determination of eligibility as outlined in 39-51-2402, MCA.

Employment Relations Division:

7. This legislation would eliminate the contractor registration (CR) process as created by the 1995 Legislature.
8. Contractor registration funding was identified to support administrative costs for the Employment Relations Division. If this funding source disappears, division administration costs still exist and funding of $125,923 for fiscal 1998 and $117,166 for fiscal 1999 would be reapportioned over all funding sources of the division.
9. Independent contractor exemption funding was identified to support division administration costs which still exist. The representative share of division administration costs related to IC would be funded by Workers' Compensation administrative fund (02455). See assumption two.

(continued)

Dave Lewis 3-13-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BRAD MOLNAR, PRIMARY SPONSOR DATE

Am HB 252 #2

FISCAL IMPACT:

Expenditures:	FY98 Difference	FY99 Difference
Legal/Centralized Services Division		
FTE	(3.00)	(3.00)
Personal Services	(110,033)	(110,097)
Operating	(48,286)	(48,046)
Equipment	(2,613)	(772)
Total	(160,932)	(158,915)
Employment Relations Division		
FTE	(7.50)	(7.50)
Personal Services	(233,562)	(233,562)
Operating	(37,339)	(37,339)
Equipment	(4,812)	(4,812)
Total	(275,713)	(275,713)
Total - Department of Labor and Industry		
FTE	(10.50)	(10.50)
Expenditures	(436,645)	(434,628)
Funding:		
SSR (02)(Contractor Registration)	(436,645)	(434,628)
SSR (02)(for Admin. of CR-02346)	(125,923)	(117,666)
SSR (02)(ESA-02258)	14,740	13,399
SSR (WCA-02455)	72,719	67,703
FSR (03) (DLI Fed Fund-03128)	1,946	1,769
FSR (03)(Fed Safety Fnds-03130)	1,402	1,274
FSR (03)(Fed MSHA-03195)	2,813	2,557
Prop(06)(SIF Adm-06041)	443	403
Prop(06)(UEF Adm-06055)	31,860	30,561
SSR (02)(IC Exemption -02091)	(216,475)	(213,236)
SSR (02)(WCA-02455)	216,475	213,236
Total	(436,645)	(434,628)
Revenues:		
SSR (02)(CR-02346)	(600,000)	(600,000)
SSR (02)(IC Exemption-02091)	(216,475)	(213,236)
SSR (02)(WCA-02455)	216,475	213,236

TECHNICAL NOTES:
Repeal of 39-3-703, MCA, removes the requirement that electrical contractors registered with the State Electrical Board be required to obtain a contractor bond for wages and benefits.

The term "employing unit" contained in Section 2 is not defined in the Workers' Compensation Act.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0252, revised second reading - second house

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising the laws governing contractors and independent contractors; repealing contractor registration requirements; eliminating bonding requirements for contractors; eliminating investigatory, enforcement, notice and appeal procedures, and penalty provisions relating to contractor registration; decreasing the fee for the issuance of the initial certificate to a maximum of $50 and the fee for the renewal or reinstatement of a certificate to a maximum of $50; providing an exemption for fire suppression or protection licensees, for contractors in the logging industry who build forest access roads, and for independent contractors who have no employees; providing that an independent contractor exemption remains in effect for 3 years; providing for a $25 fee for the initial exemption application and for each subsequent renewal.

ASSUMPTIONS:
1. Implementation of this legislation would require 3.0 FTE (two information specialists, and one customer service/licensing technician). Operating costs and administrative overhead to support these three positions are identified below.
2. The revenue at $50 every three years would be insufficient to fund the workload for the duties identified in the legislation.
3. Section 7 of HB 252 exempts new categories of persons from the contractor registration requirement. Because less than 50% of the currently registered contractors would be required to register under HB 252, it is estimated that 4,000 contractors would be required to register.
4. Seventy percent of the estimated 4,000 (2,800) contractors would register in fiscal 1998. The remaining 30% (1,200) would register in fiscal 1999.
5. New construction contractors would start up in business every year. Education is required in statute. Although there would be variations in the type of workload, in the year when the registration workload is lighter, the Department of Labor and Industry would increase the education emphasis. Likewise, when the registration workload is intense, the department would decrease the emphasis on education.

FISCAL IMPACT:
Department of Labor and Industry

	FY98 Difference	FY99 Difference
Employment Relations Division:		
Expenditures:		
FTE	3.00	3.00
Personal Services	82,828	82,828
Operating Expenses	70,772	70,772
Total	153,600	153,600
Funding:		
SSR (02)(Contractor Registration)	140,000	60,000
General Fund (01)	13,600	93,600
Total	153,600	153,600
Revenues:		
SSR (02)(CR-02346)	140,000	60,000
Net Impact on Fund Balance: (Revenue minus expense)		
SSR (02) (CR-02346)	0	0
General Fund (01)	(13,600)	(93,600)

(Continued)

Dave Lewis 4-10-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BRAD MOLNAR, PRIMARY SPONSOR DATE

TECHNICAL NOTES:
The nature of the legislation covers a three year period, but this fiscal note covers a two year period. The time frames are incongruous for illustration.

Based on the cyclical nature of the workload as imposed by this legislation, a biennial appropriation would be beneficial to the department.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on February 7, 1997, at 8:00 AM, in Room 325.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 252, (1/29/97); HB 407, HB 410 (1/31/97)
Executive Action: HB 388; HB 410; HB 240

HEARING ON HB 252

Opening Statement by Sponsor: **Rep. Molnar,** H. D. 22 introduced the bill. **EXHIBITS 1, 9, 13, 25**
{Tape: 1; Side: 1; Approx. Time Count: 2.0; Comments: None.}

Proponents' Testimony:
David Hoffman, Attorney-Intermountain Systems
{Tape: 1; Side: 1; Approx. Time Count: 12.9; Comments: None.}

Russ Penco, Bozeman, MT
{Tape: 1; Side: 1; Approx. Time Count: 20.1; Comments: None.}

Dick Greene,
{Tape: 1; Side: 1; Approx. Time Count: 31.0; Comments: None.}

Walt Dupea, Big Fork, MT contractor. EXHIBITS 2,3,4,5
{Tape: 1; Side: 1; Approx. Time Count: 32.1; Comments: None.}

Charles Lorentzen, Contractor. EXHIBIT 6.
{Tape: 1; Side: 1; Approx. Time Count: 33.6; Comments: None.}

Rich Rossingnol. EXHIBIT 7
{Tape: 1; Side: 1; Approx. Time Count: 35.4; Comments: None.}

Jenny Dodge, Ind. contractor. EXHIBIT 8.
{Tape: 1; Side: 1; Approx. Time Count: 37.1; Comments: None.}

Larry Brown, No. Montana Oil and Gas Assn & Ag Reservation Assn.
{Tape: 1; Side: 1; Approx. Time Count: 38.7; Comments: None.}

Paul Newby, Assn of Rural Contractors
{Tape: 1; Side: 1; Approx. Time Count: 40.5; Comments: None.}

Lorna Frank, Farm Bureau
{Tape: 1; Side: 1; Approx. Time Count: 42.; Comments: None.}

John Bloomquist, MT Stockgrowers Assn.
{Tape: 1; Side: 1; Approx. Time Count: 43.1; Comments: None.}

George McWilliams, Bozeman, MT. EXHIBIT 24.
{Tape: 1; Side: 2; Approx. Time Count: .2; Comments: None.}

Jim Brandon
{Tape: 1; Side: 2; Approx. Time Count: 1.4; Comments: None.}

Don Baker, Ind. Contractors of Montana. EXHIBIT 16.
{Tape: 1; Side: 2; Approx. Time Count: 2.7; Comments: None.}

Opponents' Testimony:
Rep. Vicki Cocchiarella, H. D. 64
{Tape: 1; Side: 2; Approx. Time Count: 4.6; Comments: None.}

Don Chance, MT Building Industry Assn.
{Tape: 1; Side: 2; Approx. Time Count: 7.9; Comments: None.}

Dave Cogley, Weldwood Homes, Helena Bldg Industry Assn. EXHIBIT 10.
{Tape: 1; Side: 2; Approx. Time Count: 14.2; Comments: None.}

Don Hutchins, Loss Control Specialist. EXHIBIT 11.
{Tape: 1; Side: 2; Approx. Time Count: 19.9; Comments: None.}

George Hensley, Helena Builder
{Tape: 1; Side: 2; Approx. Time Count: 23.9; Comments: None.}

Missoula Home Builders-cannot understand name and not on list.
{Tape: 1; Side: 2; Approx. Time Count: 26.8; Comments: None.}

Jeff Engle, EXHIBIT 23.
{Tape: 1; Side: 2; Approx. Time Count: 29.3; Comments: None.}

Bob Ross, Ross Const and Flathead Bldg Assn.
{Tape: 1; Side: 2; Approx. Time Count:30.4; Comments: None.}

Gary Forrester
{Tape: 1; Side: 2; Approx. Time Count: 32.4; Comments: None.}

Chuck Hunter, MT Dept of Labor. EXHIBIT 12.
{Tape: 1; Side: 2; Approx. Time Count: 38.5; Comments: None.}

Jim Eberle, Insurance business, Bozeman. EXHIBIT 15.
{Tape: 1; Side: 2; Approx. Time Count: 39.0; Comments: None.}

Tim Dean, Bozeman, MT. EXHIBIT 14.
{Tape: 1; Side: 2; Approx. Time Count: 40.1; Comments: None.}

Jacqueline Lenmark, Am. Insurance Assn.
{Tape: 2; Side: 1; Approx. Time Count:.1; Comments: None.}

Sandi Nickel, SW Montana Building Assn.
{Tape: 2; Side: 1; Approx. Time Count: .4; Comments: None.}

Tom VanOrel, Dillon Contractor
{Tape: 2; Side: 1; Approx. Time Count: .8; Comments: None.}

Lawrence Hubbard, State Workman's Comp.
{Tape: 2; Side: 1; Approx. Time Count: 1.1; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 2; Side: 1; Approx. Time Count: 1/4; Comments: None.}

Closing by Sponsor:**Rep. Molnar** closed. **EXHIBIT 17.**
{Tape: 2; Side: 2; Approx. Time Count: 20.2; Comments: None.}

HEARING ON HB 407

Opening Statement by Sponsor: **Rep. Ewer,** H. D. 53 introduced the bill. **EXHIBIT 18.**
{Tape: 3; Side: 1; Approx. Time Count: .8; Comments: None.}

EXHIBIT 1
DATE 2/7/97
HB 952

FIFTH JUDICIAL DISTRICT COURT
BEAVERHEAD COUNTY
FILED
AUG 14 1996
SHEILA BRUNKHORST, CLERK
BY Sheila Brunkhorst

MONTANA FIFTH JUDICIAL DISTRICT COURT, BEAVERHEAD COUNTY

* * * * * * * * * * * * * *

INTERMOUNTAIN SYSTEMS, INC., a Montana Corporation, Plaintiff,	*	Cause No. DV-96-11840
v.	*	FINDINGS, CONCLUSIONS AND ORDER (Preliminary Temporary Injunction)
C & C FARM AND RANCH SUPPLY, a Montana Corporation, Defendant,	*	
and	*	
STATE OF MONTANA, Defendant-Intervenor.	*	

* * * * * * *

This matter came before the Court on Plaintiff's Application for Preliminary Injunction and reciprocal cross motions for summary judgment. The Court now having considered the entire record, and written and oral argument of counsel, does now make the following:

FINDINGS OF FACT

1. On or about June 28, 1996, the Plaintiff Intermountain filed its Motion for a Temporary Restraining Order and Order to Show Cause, or in the alternative, Application for Preliminary Temporary Injunction. Plaintiff is a Montana contractor and seeks the injunctive relief from the State's enforcement of the so-called Contractor Registration Act.

2. On June 28, 1996, the Court issued the requested Temporary Restraining Order. The order restrained the State from enforcing the provisions of Chapter 500, Montana Session Laws of 1995, except for processing applications for registration numbers or performing clerical functions relating thereto.

3. The State was notified of the Application for the Temporary Restraining Order and appeared through counsel. The Court issued an Order to Show Cause directing the parties to appear on July 16, 1996 to address the issue of a Preliminary Temporary Injunction. The parties appeared, and filed cross motions for summary judgment. Evidence was adduced and the matter orally argued and subsequently briefed.

4. After the July 16 hearing the Court ordered the Temporary Restraining Order continued, pending consideration of the voluminous briefs. Subsequently on August 1st the Court extended the Temporary Restraining Order until August 15 by agreement of the parties.

5. The Court now finds that absent the requested Preliminary Temporary Injunction, the State's contemplated enforcement of the Act will result in great and irreparable injury to the Plaintiff and others similarly situated. Plaintiff and contractors similarly situated face the prospects of fines, penalties, even incarceration.

6. The Court finds that while the simple act of registering could prevent the enforcement of the sanction provisions of the Act, there is from the evidence a genuine and good faith concern regarding constitutional violations of privacy, and a reasonable expectation thereof, created by information sought on the State's proposed registration form. There was a total absence of evidence showing any compelling State interest in overcoming these claimed privacy rights.

7. The Court further finds that even the State is concerned about immediate ramifications from enforcement of this Act. The evidence discloses that it contemplates a period ("a

few months") of orientation and education of contractors before implementing enforcement[1]. If the State is that concerned, so is the Court. The possibility of violation of rights of due process, including double jeopardy and excessive sanctions are real.

8. The Court finds that the issuance of a Preliminary Temporary Injunction, *pendente lite*, would preserve the *status quo*, and be consistent with the State's own concerns as set forth herein.

From these findings the Court now issues its:

CONCLUSIONS OF LAW AND ORDER

GRANTING PRELIMINARY TEMPORARY INJUNCTION

I

To the extent that the foregoing Findings of Fact make certain Conclusions of Law or the application of law to fact, the same are incorporated herein as Conclusions of Law.

II

The reciprocal motions for summary judgment are DENIED.

III

This is a proper case for the issuance of a Preliminary Temporary Injunction, *pendente lite*, and without bond.

IV

The State of Montana and its agents are hereby temporarily enjoined and restrained during the pendency of this action from enforcing the provisions of Chapter 500, Montana Session Laws, as codified in §39-9-101, *et seq*, MCA. The *status quo* shall be maintained pending a final hearing on the merits.

\\ //

\\ //

[1]See Department of Labor newsletter, Plaintiff's Exhibit A to its brief.

V

This order shall not prohibit the State from routine administrative duties related to processing applications, and its orientation and education programs.

DATED this 14th day of August, 1996.

Richard Davis
District Judge

CLERK OF COURT'S CERTIFICATE OF SERVICE
THIS IS TO CERTIFY that the within document was duly served on all parties indicated below, by U.S. Mail or personal delivery, this 14th day of August, 1996

Sheila Brunkhorst
Clerk

Hoffman & Suenram
Kozakiewicz Law Office
Attorney General's Office

INDEPENDENT CONTRACTORS OF MONTANA

February 7, 1997

EXHIBIT 2
DATE 2/7/97
HB 252

Montana House Business and Labor Committee
Helena, MT

RECOMMEND DO PASS HB252

Exhibit # 2 - 16 pages of testimonies & documents
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P. O. Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

Independent Contractors of Montana formed as a result of pass restrictive, and violates so many of our basic rights as U. S. and organize to protect ourselves. SB354 is aimed, to a great exten left out of the proverbial legislative loop. Chris Racicot, execut opposed to SB354. His statements include:

> "The proposed legislation has not addressed the issue p independent contractor industry, in any mannor.....Toda amendments, over 30 percent of the contractors are not Registered contractors pay premiums, that are 30% too hig people, unless there is a "policeman" on every single administrative nightmare." (Senate Labor & Employment R

Mr. Racicot's concerns are as valid today as the day he made tl represents the construction industry could be convinced to sign preceded us by Washington State. From my short time here at the Capital, I get a sense that the ICM, MBIA, and workers compensation insurers have common goals. However, ICM believes the bureaucratic approach taken by SB354 has already been proven wrong.

So onerous were the provisions in SB354 that district court slapped an injunction against the MDLI citing "great and irreparable injury to the Plaintiff [Rep. Molnar] and others similarly situated" (Judge Davis, Montana 5th Judicial District Court, 8/14/96). Common sense mandates that SB354 be repealed, not just amended because future court action could leave all efforts a confused mass of legislation. You can avoid this needless waste of time and expense by repealing SB354.

SB354, and its amended version SB45, effectively turns an entire industry, construction, over to control by the Montana Department of Labor and Industry (MDLI). This represents 7% of all compensation earned in 1995 (Phil Brooks, MDLI). The MDLI can make rules (laws), enforce rules (compliance inspectors), judge the rules (hearings), and keep all the fines. The court injunction barred the MDLI from enforcing any part of this law, 85% of its activity. Since its inception, contractor registration earned $1,130,765. However, the MDLI stated that to refund contractor registration fees as required by HB252, all $1,130,765 plus $22,611 for expenses would have to come from the general fund (Fiscal note for HB252). How can the MDLI justify spending all this money when its major activity was under court injunction? Do we really want a government agency such as the MDLI in total control of the construction industry? A vote for HB252 will stop this nonsense.

The intentions of SB354 were and still are confused, but more importantly completely miss what appears to be the major issues. The rallying cry when SB354 was introduced was "consumer protection." The crisis cited was shoddy workmanship by roofers after a Billings hail storm. However, the second intent listed in SB354, consumer protection, was crossed out of the bill. The bond required in SB354 is not accessible to consumers. Consumer liability is actually increased by SB354; the hiring unit is now responsible to check the registration of every contractor coming on the job. This requires calling an 800 number and getting approval for every contractor for every job. This is because the "privilege to work" can be revoked by the state at any time for things like child support, default of student loans, etc. SB354 mandates that the hiring unit is liable if only one worker slips through the screening process. In addition, there is no way for the hiring unit to bond around a

P.O. Box 3742, Bozeman, MT 59772 (406) 586-6599 EMAIL: icmt@imt.net

EXHIBIT 3
DATE 2/7/97
HB 252

John & Carol Dorje
Hwy 83 South
Swan Lake, MT 59911

February 6, 1997

To Whom It May Concern,

We would like to voice our opposition mandatory contractor registration, so we support HB252. After living in a ~~State~~ that had this law, all this does is legitimize people who are not good builders, but buy licenses. It doesn't make him a better builder, but takes money out of a working man's pocket and food out of his family's mouth!

Sincerely,

John Dorje Carol Dorje

Representative Simon and Committee Mem

I'm writing to encourage you to repeal the mandatory contractor registration law.

I realize the motive behind the law was a noble one but often times the spirit behind the law is not followed through with in practice.

Whereas we are all interested in curtailing the activities of dishonest people in business we are also very interested in saving money. Which I'm sure you know is hard to come by in a state that only added 5100 new jobs in the last year.

I think overregulation has stopped economic vitality and would encourage you again to vote for HB-252 and allow the market forces to penalize unscrupulous contractors instead of the consuming public.

EXHIBIT 4
DATE 2/7/91
HB 252

With Respect,

Jim Lee

Bigfork

EXHIBIT 5
DATE 2/7/97
HB 252

February 7, 1997

Business and Labor Committee

Subject: HB 252 (Repeal of the mandatory contractor registration law)

To the chair of the Business and Labor Committee, Bruce Simon and to the members: Paul Sliter, Bob Pavlovich, Joe Barnett, Rod Bitney, Sylvia Bookout-Reinicke, Charles Devaney, David Ewer, Kim Gillan, Billie Krenzler, Bob Lawson, Rod Marshall, Gay Ann Masolo, Wes Prouse, Jay Stovall, Carolyn Squires, Cliff Trexler, Joe Tropila, and Carley Tuss.

The law has resulted in a severe financial and paperwork hardship on small contractors while expanding government regulation. Although the law was implemented to protect the general public from unscrupulous contractors, it has resulted in a tremendous burden to the innocent.

All of us are interested in keeping costs down. Even if someone rents an apartment, he will end up paying more for his rent. The reason--when repairing or building new buildings, the person doing the work must add the cost of fees, regulations, and another layer of bureaucracy. It is like another tax!!!!

Please vote to repeal the mandatory contractor registration law by voting for HB-252.

Walt Dupea Walt Dupea
8585 Highway
Bigfork, Montana 59911 Phone 406-837-5751

EXHIBIT 6
DATE 2/7/97
HB 252

Charles J. Lorentzen
418 4th St. East
Kalispell, MT 59901

The Honorable Bruce Simon
Capital Station
Helena, MT 59620

Re: HB 252

February 7, 1997

Chairman Simon and Members of the House Business and Labor Committee,

The Buisness and Labor plank of the Republican Platform says on page 10, heading Government: "The Montana Republican Party believes that the role of government in economic development is to fully cooperate with the private sector in retaining and expanding existing businesses, and in the establishment of new business and industry by eliminating unnecessary regulation and control within our state." A very good place to begin "eliminating unnecessary regulation" is to vote to repeal the contractor registration law; vote for HB 252.

Larger contractors complained that they were paying too big a share of worker's compensation so they pushed for the law in 1995. They felt wounded so in effect they tried to equalize things by inflicting a similiar wound on the small contractors, and their law is doing a lot of wounding. I suggest a much better solution is to fix the wound of the larger contractors. Why should we tollerate a situation were the whole State of Montana is litered with wounded contractors, restricted from hiring, unnecessarily regulated, stopped from progress and growth.

The first step is to repeal this misguided law by voting for HB 252. I strongly urge you to do so. It would help to satisfy another part of the government plank shown above: "expanding existing businesses". Thank you for your consideration.

Sincerely,

Charles J. Lorentzen

Charles J. Lorentzen

EXHIBIT J
DATE 2/7/97
HB 252

Richard M. Rossiter
P.O.
Box 369
Joliy, Mt59047
(406) 278-2415

Business and Labor Committee
Room 104
Capitol Station
Helena, Montana 59620

Re: House Bill 252, Normal, Repeal Contractor Registration

Dear Mr.Chairman and Members of Committee:

I respectfully ask the committee to search for the primary truth behind contractor registration. Not level playing fields, not employe protection or consumer safety, but the real motive behind the special interest politicking. The taking of freedom.

Please remember the words of Benjamin Franklin, " They that give up essential liberty to obtain a little safety deserve neither liberty or safety". In the case of Senate bill 354 the trade is a great deal of liberty, in exchange for some more policemen in the Department of Labor.

Individual liberty is the compelling issue being scrutinized at this hearing today. What you are voting on is the ability to produce. Proponents of house bill 252 are voting for freedom. The other bills are simply variations of how much essential liberty shall be discarded.

Richard M. Rossiter

EXHIBIT 8
DATE 2/7/97
HB 252

My husband and I have been in painting contracting for fourteen years and have operated a legal contracting business. The laws (prior to SB354) have been sufficient in the past to incite the Independent Contractor to operate legally. Most Independent Contractors are law abiding Citizens who have the conviction and intelligence to run a legal business without bureaucratic regulation. Let's face it, there are always going to be a handful of characters who will attempt to evade-the-law. This same handful of lawless people (that SB354 is trying to protect us from) is the exact same group that will succeed at evading Contractor Registration. Should an entire bureaucracy be constructed with fees, penalties and legal proceedings for those who already heed-the-law?

This is why I support HB252. HB252 repeals the bureaucratic nightmare that would exist under SB354 and reestablishes free enterprise. Restoring free enterprise to the Independent Contractor will unshackle him/her from unnescessary governmental regulations enforced by the Department of Labor: whose intrusive rules, penalties and criminal proceedings would reduce The right-to-work to a mere privilege.

It's important to remember who we are. This is the United States and our forefathers built this great nation with a lot of backbreaking work and sweat. And They did this without being Registered and it has worked successfully so far. Preserve free enterprise by supporting HB252.

Jenny Dodge
P.O. Box 965
Helena, MT 59624
(406) 449-5606

JOHN E. KROSKEY REPAIR & REMODELING

P.O. BOX 549
2020 NIXON GULCH RD.
MANHATTAN, MT 59741
PHONE (406) 284.6872
FAX (406) 284-3739

EXHIBIT 9
DATE 2/7/97
HB 252

February 6, 1997

To Whom it May Concern:

I would like to state, for the record, just two of my many objections to the Contractor's Registration Law as it was originally passed.

As a newcomer to the state of Montana in 1995, I found this law to be astonishing.

It required me to post dollars for a bond to cover Workman's Compensation.

At the same time, I was allowed to file for an exemption to this requirement, since I have no employees. The state granted the exemption, but still required me to post the bond so that I could register. Does this make sense?

So now I have a bond, which covers nothing. But I can't advertise that I am "bonded" because this bond offers no protection to the consumer.

In another respect the application process defied reason.

When I applied for my registration number, I had to submit evidence that I am a *bona fide* contractor.

Acceptable evidence included such things as quotations and invoices. Yet I was not permitted by the State of Montana to submit a quotation or issue an invoice unless I had a contractors registration number.

Therefore, in order to to comply with the law, I had to violate the law.

This is a very poorly conceived law that needs to be repealed.

Sincerely,

John E. Kroskey

WILDWOOD Homes

1 Prickly Pear Dr. • Clancy, MT 59634 • (406) 442-3176

EXHIBIT 10
DATE 2/7/97
HB 252

Testimony on House Bill 252 - February 7, 1996

Mr. Chairman and members of the committee, my name is Dave Cogley. I am an independent building contractor, working primarily in the Helena area. I am speaking for myself and for the Helena Building Industry Association, consisting of approximately 120 builders, tradesmen, and suppliers.

I am one of those contractors who has chosen to carry insurance other than workers compensation insurance on myself, and have held the independent contractor exemption certificate issued by the Department of Labor since 1987.

I am speaking only to the portion of House Bill 252 which repeals the contractor registration program established last session by SB 354.

Stated simply, contractor registration is about properly identifying those workers in the construction industry who are independent self-employed contractors and exempt from workers compensation and unemployment insurance laws, and those who are employees who are subject to those laws. Its purpose is to insure that everyone is in compliance with those laws. It is a complex issue, but I would like very briefly to trace the course of legislation which led to a contractor registration program. I think it is helpful to remember where we've been with this issue, to understand why we have a construction contractor registration law.

Background

Workers compensation law since its inception has excluded independent contractors from its requirements. 39-71-118, MCA. However it also established a presumption that a worker was an employee unless he clearly fell within the legal definition of an independent contractor. 39-71-120, MCA. The problem is determining when a worker fits within the definition and is therefor exempt. Improperly identifying a worker as an independent contractor results in many consequences detrimental to insurers, to employers who are paying the premiums, and to the entire workers compensation system.

One way of identifying a worker as an independent contractor is a pre-certification process, which was adopted by HB 277 in 1983 and codified at 39-71-401(3), MCA (language appears at pages 7 and 8 of HB 252). That legislation clearly indicates that if a person is representing himself to be an independent contractor he must either obtain workers compensation insurance or obtain an exemption certificate from the Department of Labor and Industry. The statement of intent accompanying that bill reads as follows:

"Many times, the determination of whether a worker is an

independent contractor is made after a worker, for whom no contributions have been made, is injured and files a claim. This act provides a method for a before-the-fact determination of the independent contractor status. The act is not intended to make independent contractors subject to the Workers' Compensation Act but requires that they apply for that status to be exempt." (See annotations to 39-71-401.)

Those of us who promoted HB 277 thought that certification by the Department of Labor would help absolve employers of the responsibility of correctly determining whether a worker fit within the IC definition. But there turned out to be problems with the certification requirement:

1) The Montana Supreme Court in 1991 determined that a person who fit the definition of independent contractor, even though he hadn't obtained a certificate, was in fact an independent contractor and excluded from work comp benefits. Doig v. Gravely, 809 P2d. 12 (1991). The court said essentially that the certificate was not necessary, thus removing the impetus for workers to get it.
2) The certificate as originally enacted was perpetual, and therefor did not reflect changing work situations of workers over time. That is why annual renewal was required in HB 200 in 1995.
3) Independent contractors exist in many lines of work other than construction, yet most of the problems involve primarily the construction industry. HB 277 in 1983 did not impose the certification requirement on some other occupations, notably agriculture, but work comp revision legislation in 1987 brought in all occupations. Hence there has been resistance from many independent constractors who were not creating the problem.
4) The department has had administrative problems granting the exemption certificates which I will not even attempt to describe.

This requirement to obtain an independent contractor certificate did not arise from SB 354 and contractor registration, as the so-called "c" test, but has been law since 1983. Although the IC certification has not worked as well as hoped, most "savvy" employers still require it from the independent contractors whose services they engage.

Because of continuing concern about the uncertainty of the independent contractor status, legislation was introduced in both 1991 and 1993 to eliminate the independent contractor exemption altogether for construction workers, thus forcing everyone to carry or be included under a work comp policy. These bills were supported by the Montana Building Industry Association, but created bitter division within the membership, as well as the construction industry as a whole. I would guess most of us here today would resist eliminating the independent contractor exemption. Those bills barely failed, but many legislators still felt something needed to be done. So in 1993

and 1994 an interim legislative study committee (chaired by Senator Harp) examined the issue. A full report of the committee's deliberations can be obtained downstairs at the Legislative Council. The committee did not recommend eliminating the exemption, and in fact did not come up with any specific recommendations for legislation. But it did suggest that all concerned parties look more closely at contractor licensing or registration for the construction industry, and the Washington model was specifically discussed.

So in 1995 Senator Forrester introduced SB 354, attempting to integrate both Washington law and existing Montana law. Because it was introduced late and we had no time to study it in depth, we opposed SB 354 initially. But when it appeared the bill would come out of the Senate over our opposition, we decided to work with Senator Forrester and several other groups to "improve" his bill, and it did undergo a dramatic transformation before final passage. I think we all knew and accepted that it would need further fine-tuning in the 1997 session, and the confusion that has resulted since certainly bears that out. You will hopefully soon receive Senate Bill 45, which we feel does address all the reasonable concerns that have been raised about the program.

Why We Need Contractor Registration:

Registration addresses the problem by compelling the identification of all construction contractors and providing a mechanism to insure that all those contractors are in compliance with workers compensation and unemployment insurance law. It requires the prior determination of compliance by the Department of Labor many had hoped for under the 1983 IC certification law, and absolves any employer who obtains a copy of current registration from further liability under workers compensation or unemployment insurance laws. Most importantly to many of us, it preserves the personal independent contractor exemption.

By identifying all construction contractors a record is created. Perhaps this is objectionable to some contractors who prefer anonymity, for whatever reason. However, I believe there is a legitimate state interest in properly identifying "contractors" from "employees", and that this program is a reasonable means of doing that. I also believe there is a benefit to the contractor in being "registered", in that it assures the public that you are legitimate, and therefore enhances your credibility in the marketplace. I also believe it enhances our image as an industry in the eyes of the public we serve, even though in Montana's small communities our own personal reputation undoubtedly means more than registration.

Finally, I would say to the proponents of this bill, that if you are successful in killing the contractor registration program, you will almost certainly see legislation again to eliminate the exemption under workers compensation law for independent contractors. It will be a very sad day indeed if

that legislation should succeed because we were too bull-headed to accept a registration program.

For these reasons I urge the committee to preserve the contractor registration program, and to amend out of HB 252 the provisions repealing that law.

Dan Hutchins

EXHIBIT 11
DATE 2/7/97
HB 252

Construction Accident Probability in Montana

The probability of a construction worker suffering an accident

- 1 year = 23.2%
- 5 years = 73.3%
- 10 years = 92.9%
- 15 years = 98.1%

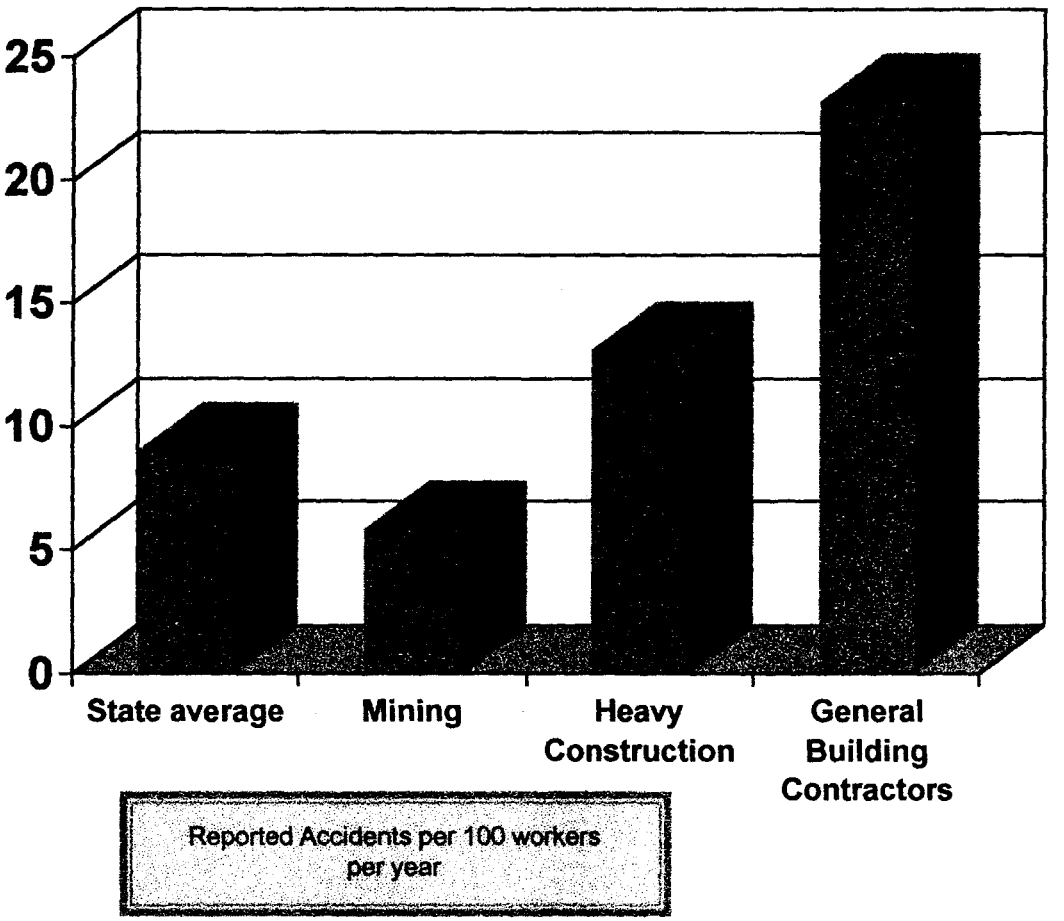

EXHIBIT 12
DATE 2/7/97
HB 252

TESTIMONY ON HOUSE BILL 252
CHUCK HUNTER - DEPARTMENT OF LABOR AND INDUSTRY

We rise in opposition to this bill for a variety of reasons, but they can be categorized into two areas.

First, we see value in the contractor's registration program. We believe when fully implemented, it will provide both a fairer competitive environment for construction contractors -and provide contractors specific protection from liability that previously moved from contractor to contractor.

We support modifications to the contractor registration law, many of which are contained in Senator Holden's bill, SB 45.

In terms of construction contractor registration, this bill offers you a fairly clear policy choice: repeal it, or not. We believe it should not be repealed.

Our second point of opposition to the bill regards independent contractors. The policy choices contained in this bill regarding independent contractors are neither clear, nor easy, and what this bill proposes to do to independent contractor status will cause confusion, uncertainty, and a flood of cases in our courts.

This bill changes the definition of independent contractor dramatically. While it restores the old A/B definition in the first part of Section 120 (lines 6 - 9 on page 5), it goes on to say that anyone who represents to the public that they are an independent contractor is considered to be one. Nowhere does it say what it means to "represent to the public", and this has been a grey area for years. Let me predict for you a flood of cases where two parties are in court - one side arguing that "he told me he was an independent contractor" and the other side saying 'no, I never said that - I was always his employee".

Reading further into lawyers heaven, we find on lines 14 and 15 of the same page that the department cannot take any action against a person "relying on a claim" of independent contractor status. This allows employers to shed any responsibility they have to their employees, needing only to claim - he told me he was an independent contractor.

But the best is yet to come. Looking at page 8, lines 2 and 3, you will find a new provision under which anytime "the contracting parties agree to an independent contractor status" it is conclusive as to that status. Members of the committee, let me make a prediction. If this language is put into law, you will see a huge, huge increase in the number of workers who are being called independent contractors.

These will not be independent business men and women - these will be employees of every stripe, whose boss has told them "if you want to continue working here, you will become an independent contractor. If you don't, you won't have a job. " We see this problem every week in our office. It will be rampant if you pass this bill.

I also need to point out that the changes made by this bill to the independent contractor definition apply only to workers' compensation - they will not change the definitions under unemployment insurance and state revenue codes.

Turning to section 405, on pages 9 and 10 of the bill. This section deals with liability for the payment of workers' compensation benefits moving from an uninsured sub-contractor up to the general contractor. Under the existing law, this section was a means to provide benefits to an injured worker when his employer neglected to have workers comp coverage. Under the proposed revisions, an employer has no responsibility whatsoever, so long as he contracts his work. This is not casual labor mind you - this is the employers own regular work. If you say you have a contract, you dodge all responsibility.

Let me point our a few technical problems in this bill. Lines 4-6 on page 10. These lines would prevent an employer and a contractor he hires from using the same insurance carrier, which I suspect is not intended.

And in subsection 3 on that same page, lines 7-10, this bill provides that when an employer contracts for work to be done by a contractor, that the contractor shall not be an employer. Evidently, under this bill, no one will be an employer.

New section 5 on page 10 - the fee refund. We want the committee to understand that we have been quite busy administering this law over the past eighteen months. We have been doing the work the 1995 legislature gave us to do. We have processed over 8000 applications and bonds, dealt with thousands and thousands of phone calls, made dozens of public presentations to clear up the misinformation and confusion about contractor registration and independent contractors. The law does not provide that we spend 85% on enforcement. The misinformation spread about this law has contributed greatly to the workload of staff in this unit, as well as to the anger and animosity these employees have had to face. I have a few examples from newspapers around the state to share with the committee. Our staff faced up to the demand of handling every phone call, going to every meeting we were asked to attend, speaking at every local association that wanted information.

The section calling for the repayment of funds we have spent in trying to operate this program and be responsive to our citizens is at best simply punitive, and it seeks to further punish state employees for doing the work given to them by the legislature.

We do have one point of agreement with the sponsor. His repealer section eliminates the contractors bond act, which we support.

Thank you.

EXHIBIT 13
DATE 2/7/97
HB 252

CONTRACTORS REGISTRATION ACT SB354; QUESTIONS AND ANSWERS

Question: Who must register?
Answer: Contractors and sub-contractors in the construction industry. Even when working on their own property. There are several exemptions to this including homeowners working on their own property (unless it is for the purpose or intent of resale). There are also exemptions for several trades. ie plumbers, electricians and security companies acting within the scope of their licenses and licensed architects or civil or professional engineers are several. No other licenses may be used in lieu of registration.(Sec. 2 and Sec. 10)

Question: Can the $80 registration fee be raised?
Answer: Yes. Anytime the Dept wants more money the Legislature can raise the fee limit for them. They raised it before the Bill even passed.

Question: Does a person need to have a Work Comp policy to be a registered constructon contractor?
Answer: No. An exemption form will suffice and if you own 20% of your corporation you may opt out of Work Comp and not even need the exemption form. Of course you still need to bond. (Sec27)

Question: What is the difference between contractor registration and independent contractor exemption?
Answer: Not much. By every definition of the term "registration" they are both the same. The confusion comes in that "contractor registration" as used in SB354 deals only with the construction industry. An Independent Contractor can be found in the construction industry and all other industries. For purposes of State Law (not to be confused with federal law) Independent Contractors are simply people that are exempted by law or action from having to pay for a Work Comp policy regardless of their industry. Now they must register their name and occupation with the government to be considered legitimately independent.

Question: Did the Contractors Registration Act change any work comp or unemployment laws?

Answer: No. If you were covered by, or exempted from, them before you are still.

Question: If I retire can my son take my Registration Number and continue to run my business?
Answer: No. Not if you are a sole prop...but your wife can.

Question: I have a small remodeling business. Medical bills ruined my credit so I can't get a bond. I don't have enough money to post a $4000 cash deposit. I have no employees.Is there a way I may still keep my business?
Answer: No.

Question: Does SB354 affect only construction contractors?

contributions due the state or the Depts legal expenses to collect same. (Sec 28)

Question: Does my tax money fund this program?
Answer: Just a little. Mainly the program is funded through your registration fees and fines.

Question: Is Ag exempted from the provisions of SB 354?
Answer: No. Because of the nature of todays Agri-business agriculture is particularly hard hit. (Sec. 10,30)

Question: How are average homeowners affected?
Answer: Adversely. They were and are immune from work comp liability. Now they face work stoppages, higher prices, and a full bureaucracy for fixing up their home for resale. (Sec 10)

Question: If I have no employees, full work comp coverage, and pay unemployment on myself do I still have to bond and register?
Answer: Yes. This is not a work comp measure. It is a registration measure. Whether you have work comp or not if you are not registered we can shut you down, fine you, and throw you in jail.(Sec 3)

Question: If I have liability insurance and the bond required for registration may I advertise that I am "bonded and insured"?
Answer: No. To do so may result in a $5000 fine. (Sec.11)

Question: If I register under my current address but move must I throw out my cards, letterheads, signs, contract forms, etc. that don't show the address that I am registered under and reprint everything showing my new address?
Answer: Yes. You risk a $5000 fine to operate under an address different than the one you are registered under. If you move you must re-register and change your printing and advertising. You may not register under your PO Box and advertise under your street address...under penalty of law. (Sec. 11)

Question: Does a compliance officer need a search warrant to enter private property to look for unregistered contractors?
Answer: No. He only needs to present his credentials. (Sec. 16)

Question: If a compliance officer shows up and demands to know who the contractor on the site is and I refuse to answer what happens?
Answer: May be jailed up to six months and fined $500. (Sec. 17)

Question: If the compliance officer reasonably believes that there are unregistered contractors on the site does he have the authority to shut the job down?.
Answer: Immediately. (Sec. 18)

Question: When does this law take effect?
Answer: It is in effect. Since Oct 1, 1995 if you are not registered you have lost the right to use the courts to settle

Tim Dean →

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS TIM DEAN, OWNER OF TIM DEAN CONSTRUCTION - BOZEMAN.

EXHIBIT 14
DATE 2/7/97
HB 252

FOR THE RECORD, I AM OPPOSED TO HB 252 AND THE ELIMINATION OF CONTRACTOR REGISTRATION AS WELL AS THE DEVASTATING EFFECTS THIS BILL WOULD HAVE ON THE LARGER WORKERS' COMPENSATION SYSTEM.

AS A NATIVE MONTANAN AND PART OF THE BUILDING INDUSTRY FOR THE LAST 22 YEARS, I HAVE STATED REPEATEDLY HOW PLEASED MY WIFE AND I ARE TO BE INVOLVED IN SUCH A PROUD INDUSTRY.

HOWEVER, OVER THE PAST YEAR-AND-A-HALF, ALL OF US HAVE OBSERVED A SMALL FOCUSED EFFORT TO REPEAL CONTRACTOR REGISTRATION BEFORE IT EVEN HAS A CHANCE TO BE DE-BUGGED. IT HAS MADE ME SAD AND VERY DISAPPOINTED.

I HAVE TRIED TO MAKE SOME SENSE OUT OF THE EFFORT---BUT HAVE CONCLUDED THAT THE PROBLEM IS NOT SO MUCH ABOUT CONSTITUTIONALITY OR LARGER GOVERNMENT--BUT MORE SO -- IT IS ABOUT BUSINESS VALUES AND ETHICS.

THE INDUSTRY I KNOW HAS ALWAYS SUPPORTED WHAT IS RIGHT -- AND OPPOSED WHAT IS WRONG!!!

WHAT IS RIGHT IS EVERY EMPLOYER SHOULD COVER HIS EMPLOYEES AGAINST INJURY. IT IS NOT ONLY THE LAW, BUT IT IS MORALLY THE RIGHT THING TO DO.

HOW CAN ANYONE ARGUE AGAINST THAT???

WHAT IS ALSO RIGHT IS EVERY PERSON CHOOSING TO OWN HIS/HER BUSINESS, SHOULD BE LIABLE FOR THEIR OWN MISTAKES AND RESPONSIBLE FOR THEIR OWN BUSINESS.

THE BASIC LABOR LAWS OF THE STATE OF MONTANA STATE THAT IF YOU OWN YOUR OWN BUSINESS AND HAVE EMPLOYEES, YOU MUST COVER THOSE EMPLOYEES WITH WORKERS' COMPENSATION.

UNLESS OF COURSE, YOU ARE TRYING - AND SUCCEEDING - AT SIDESTEPPING THE LAW!!! HB 252 WOULD OPEN THAT DOOR OF ABUSE WIDE OPEN - BACK TO THE BAD OLD DAYS.

WE WANT, PLAINLY STATED, A SIMPLE MECHANISM WITH A SIMPLE CHECKING PROCEDURE TO ASSURE US THAT OTHER CONTRACTORS WORKING ON JOB SITES WITH US, ARE IN COMPLIANCE WITH THE LAW, SO THAT WE - OR A HOMEOWNER - DON'T GET STUCK WITH THE LIABILITY.

THE PLAIN AND SIMPLE FACT IS THIS---

THERE WILL CONTINUE TO BE FRAUD AND MISUSE OF THESE LABOR LAWS UNLESS THERE IS A SIMPLE, BUT EFFECTIVE, CENTRAL REGISTRATION SYSTEM.

THANK YOU FOR YOUR TIME AND PLEASE VOTE AGAINST HB 252.

EXHIBIT 15
DATE 2/1/97
HB 952

Dear Sirs,

My name is Jim Eberly and I support HB-252. In my contracting business I am responsible for the quality of my work. My reputation as a professional is my main advertising , the buck stops here! The current contractor registration law is to extreme. Penalties for infractions are seen as criminal , are judged by the MDL&I and if the person is innocent but not present at the hearing then this person is guilty!

A person can have his premises searched without a search warrant and be subject up to a $500. fine. If this person can't pay the fine on the spot then he or she is cited with another fine of up to $500. Also this person can be subject to jail time of up to 6 months per infraction. Some contractors feel that they need this contractor law for their protection, but what a price we all are paying , and the protection is not even there because one has to call MDL&I on every sub. on every new job. Furthermore your job may be shut down even if you aren't the party who was cited ,and guess what?????????????????????????? ?????????????????????????? we are out of work!!!!!!!!!!!!!!!!!!!!!!!!!!!!

Some fair and level playing field!

Let's make contractors responsible for their own employees, the buck stops here!

Very Sincerely,
Jim Eberly

Jim Eberly
Custom Paint& Paper
724 N. 22 Ave. #A
Bozeman, Mt. 59718
(406)-587-2407

EXHIBIT 16
DATE 2/7/97
HB 252

Hello my name is Dan Baker. I would like to speak on behalf of Independent Contractors of Montana as well as myself.

One area of concern that we would like to address is the liability of one business person to another

We as business people go into business knowing we will shoulder many responsibilities. The responsibilities we subject ourselves to are directly related to our own business our own customers, our own employees if we have them, and our own taxes etc. Having made this commitment to owning and operating a business we have declared ourselves Independent Business People.

Existing rules state that a contractor who hires another contractor that is not registered is liable to the employees of the unregistered contractor for wages and benefits This from Section 29 of Senate Bill 354.

The idea of one business person being responsible for the actions of another business person, especially to the extent of civil or criminal punishment is unethical. This idea penalizes the wrong party, facilitates upward migration of liability, and perpetuates a society of people who claim unaccountability. People should be encouraged and willing to take responsibility for themselves and their actions. We would like to see that people get the chance to be responsible for themselves.

Change is best achieved by example. We would like to set an example of a change for the better by showing our support of House Bill 252 which supports the idea that we are all equal and equally accountable for ourselves.

Thank you for this time.

From: Dan Baker
Northland Const.
2180 Oro Lane
Belgrade, MT
59714

406-388-4082

EXHIBIT 23
DATE 2/7/97
HB 252

Mr. Chairman, Committee members, my name is Jeff Engel. I am a homebuilder from Billings and I represent the 160 plus members of the Billings Homebuilders Association. I have been a member of this association and actively involved sinse 1983. I can assure you that an overwhelming majority of our members support Contractor Registration.

Some of the points I would like to make are:

1. Of the 7000 original applicants, over 5400 have renewed their registration in spite of the fact the Dept. of Labor has informed everyone it's optional at this time.

2. My firm builds 25-30 homes per year. I employ about 25 subcontractors, employing over 75 employees. Before Contractor Registration, the number of manhours and the amount of paperwork involved trying to stay in compliance with the law was tremendous. When the Contractor Registration Law took affect, my job and the jobs of my staff became much easier. Currently, it is fairly painless obtaining the necessary documentation from my subcontractors. The awareness this law has produced is unprecented.

3. This industry is much like many others----we can't do business on a handshake anymore. Everything must be documented and Contractor Registration helps greatly in that regard. It's also fair--my subcontractors have to be registered and so do I. We all have to play by the same rules.

4. Contractor Registration forces us all to declare our status--ahead of time. It helps to eliminate the situation where the subcontractor I hire in the morning becomes an employee in the afternoon AFTER he falls off the roof. It stops administrative liability and the upward migration of claims.

Again, our industry is NOT in favor of repealing the Contractor Registration Law. We ARE in favor keeping the law and we are committed to working with the Legislature to make it the best it can be.

EXHIBIT 24
DATE 2/7/97
HB 252

ROCKY MOUNTAIN CONTRACTORS, INC.
1310 NORTH BOZEMAN #8
BOZEMAN, MONTANA 59715
(406) 586-6734

February 4, 1997

Good morning Ladies & Gentlemen:

My name is George McWilliams. I own a small road construction company in Bozeman. I have no employees.

I feel SB354 is intrusive, full of buracracy and red tape and very confusing. Never in my life did I think I could possibly be facing criminal penalties for just getting up in the morning and going to work. If I inadvertently make a mistake, I could be facing severe jail time and fines.

As far as I know, a US Citizen's Soc. Sec. Number is their private business. If making public a contractors SS#, everybody's SS# should be made public - including legislatures and representatives and governors. And as far as making information on where tax records are kept in my house is crazy. A man's home is his castle.

This bill has 41 constitutional violations.

Why would anybody vote for a bill that had even ONE constitutional violation.

If there is a problem with independent contractors not having workman's comp there has got to be another way to solve the problem other than having to comply with Senate Bill 354.

Please support Brad Molnar's bill HB 252.

EXHIBIT 25
DATE 2/7/97
HB 252

HOUSE OF REPRESENTATIVES
55TH LEGISLATURE

_____ COMMITTEE

WITNESS STATEMENT

Please Print

NAME Dave Cole BILL NO. 252

ADDRESS Whitehall MT DATE 2-7-97

WHOM DO YOU REPRESENT? Self

SUPPORT Yes OPPOSE _____ AMEND _____

COMMENTS: I am opposed to contractor registration. I am opposed to increased govenment regulations. I believe in free enterprise and the quality of life the Constitution of the United States of America is suppose to provide, I do not agree with monopolies by the rich & elite.

W:\DATA\WP\WITNESS.95

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 2/7/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	✓		
Bob Pavlovich, Vice Chairman	✓		
Joe Barnett	✓		
Rod Bitney	✓		
Sylvia Bookout	✓		
Charles Devaney	✓		
David Ewer	✓		
Kim Gillan	✓		
Billie Krenzler	✓		
Bob Lawson	✓		
Rod Marshall	✓		
Gay Ann Masolo	✓		
Wes Prouse	✓		
Carolyn Squires	✓		
Jay Stovall	✓		
Cliff Trexler	✓		
Joe Tropila	✓		
Carley Tuss	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

_____ SUB-COMMITTEE DATE 2-7-97

BILL NO. 252 SPONSOR(S) _____

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	Support	Oppose
JEFF IERONIMO 517 N. TRACY, BOZEMAN MT	SELF	X	
TOM Helgeson 2497 EASTRIDGE BILLINS MT	SELF		X
Jim Nowell Billings MT 1920 Patriot	Self		X
Tim Carlson 3170 Solar Blv Billings	S		X
Judy Bolton Deer Lodge	S	X	
Lois Owsley Philipsburg	Self	X	
Lois Owsley Philipsburg	SELF	X	
John Power Anaconda	SELF	X	
Greg Olsen 716 Red Letter Helena	HBIA		X
Kelly J Kelly	HBIA		X
STAN HELGESON	SELF		X
DAVID R. JOHANNESSEN	SELF	X	
Carol Stevenson 3300 Alexander Road. Billings	SELF		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 2-7-97

BILL NO. 252 SPONSOR(S)

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Tom Schenn	4042 Lando Bldg Mt	Self
P O I	Elden Voss	Box 47 Helmville	Self
P O I	Dave Cole	Whitehall	Self
P O I	[illegible]	[illegible]	[illegible]
P O I	Tony W Tyler	Wolf Point	Farm/Cow/Self
P O I	Bill Hooker	Helenville	Self
P O I	Glenn HAFLA	Miles City	Self
P O I	Claudia Brown	Missoula	Self
P O I	Rosemary Hubbard	Missoula	Self
P O I	[illegible]	[illegible]	[illegible]
P O I	Jerry Profota	Bozeman	Self
P O I	Rosalea Abelin	Belgrade	Self
P O I	[illegible]	Hamilton	Bitterroot Building Ass.
P O I	Mary Dean	BOZEMAN	~~BC~~ Timberland

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 2-7-97

BILL NO. 252 SPONSOR(S)

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Rick Bagnard	Plains mt	Self
(P) O I	Joe Polus	Bozeman MT	Self
(P) O I	Terry Cobbley	Paradise MT	Self
(P) O I	Tommy Hodge	Helena	Self
(P) O I	Linda Bathgate	Billings	Self
(P) O I	Leon Pettey	Billings	Self
P (O) I	Cindy Erickson	Bozeman	Self
(P) O I	Bob Becker	Butte	Self
(P) O I	Jim Eberly	Bz	Self
(P) O I	Art Mitchell	Butte	Self
(P) O I	Kevin Nelson	Billings	Self
P (O) I	Hank Click	Bozeman	Self
(P) O I	Richard Edwards	Butte	Self
(P) O I	Thom C. Gilfeather	Billings	Self

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 2-7-97

BILL NO. 252 SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Norman Wortman	Helmville, MT	SELF
P O I	Regg. Brown	Helmville MT	Self
P O I	Todd Voss	Helmville MT	Voss Const.
P O I	Jeff Engel	Billings MT	SELF
P O I	Malcolm D. Long	Billings MT	JTL Group Inc
P O I	MIKE SHERIDAN	BOZEMAN	SELF
P O I	Richard Gabel	Bozeman	Valley Glass
P O I	Rob Baker	Belgrade	Self
P O I	Russ Squire	Bozeman	President, S.W. MT Homebuilders
P O I	Richard Gabel	Belgrade	Valley Glass
P O I	Dan Baker	Belgrade	ICM
P O I	Russ Penkal	Bozeman	Intep Contract. of MT
P O I	Larry Willard	Bozeman	Aco. Ceilings
P O I	Frank Armbrust	BOZEMAN	VALLEY GLASS

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 2-7-97

BILL NO. 252 SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P (O) I	Tim Dean	Bozeman	Tim Dean Const.
P (O) I	Bob Rose	Kalispell	MBIA, FBA Ross Const
P (O) I	Gene Mostad	missoula	MBIA, Mostad const
(P) O I	Jim Branning	Helena	Jim Branning
P (O) I	Mark Lindsay	Helena	MBIA - Lindsay Const.
P (O) I	Bill Pierce	" "	MBIA Pierce & Assoc.
P O I	Dave Cagley	"	Wildwood Homes - MBCA
P (O) I	James F. Smith	Bozeman	First Nat, Inc.
P (O) I	Alan Martin	Belgrade	Martin Const.
P O I	LaCynda Closson	Helena	Custom Interior Drywall Evergreen Drywall
(P) O I	Paul L. Newby	Bozeman	Assoc. Mt. Aerial App. Agwagons, Inc.
(P) O I	Frank Hornbaker Jr	Bozeman	Norm Rentals
(P) O I	Volunteer - Kuntz	Belgrade	Kuntz Const
(P) O I	Tom Log	Belgrade	Kuntz Const.

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE 2-7-97

BILL NO. 252 SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Larry E Nagen	9042 Walla Rd Belgrade MT	Spring Hill Ranch
(P) O I	Walt Dupea	8585 Hwy 35 Bigfork 59911	Self
(P) O I	CHARLES J. LORENSEN	418/418 S. E. KALISPELL MT	SELF
(P) O I	Patsy Rasch	62 Whitetail Helena	Self
(P) O I	[illegible]	Kinsey Rty MC, MT	Self (Husband)
P (O) I	Chuck Hunter	HELENA MT	DOLI
(P) O I	Lynne Reed	Helena MT	
(P) O I	Russ Fatten	Helena	Wattmen Const.
P (O) I	Donald C Kramer	6470 TIMBER TRAIL HELENA	" "
P (O) I	Nancy Griffin	P.O. BOX 1110 Ennis, MT	Madison Lumber Co.
(P) O I	Eugene Hatherson	PO Box 125 Vaughn MT 59487	Genes Elect
(P) O I	Art Wittich	GREAT FALLS	SELF
(P) O I	Todd Voss	Helmville, MT.	VOSS CONST.
(P) O I	LARRY BROWN	HELENA	NMOGA Ag Pros. Assoc.

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DATE 2-7-97

H ~~SENATE~~ COMMITTEE ON B+L

BILLS BEING HEARD TODAY:

HB 252 - HB 407 - HB 410

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Richard E. Mauzy	myself	HB252	✓	
CHARLES J. LOGEMANN	SELF	HB252	✓	
Fred Stevenson	Self	HB252		✓
Stella Haag	self	HB252	X	
MIKE SPENCER	Williams PLBG & HTG	HB252	X	
BEN WOOD	Williams PLBG & HTG	HB252	X	
Ken Williams	Williams PLBG & HTG	HB252	X	
Ken Ujima	Ken Ujima	HB252	X	X
John E Kroeker	John E Kroeker	HB252	X	X
Delbert Hostetler	Delbert Hostetler	HB252	X	
Richard Rossignol	self	HB252	X	
Tom Hunnegan	self	HB253	X	
Darin Johnson	SELF	HB252	X	
Kenneth A Head	S HBIR	HB252	X	X

VISITOR REGISTER

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REGISTER.F10

DATE 2-7-97

H ~~SENATE~~ COMMITTEE ON B+L

BILLS BEING HEARD TODAY:

HB 252 - HB 407 - HB 410

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Brian Patzer	Sch HB1A	HB252	~~X~~	X
Dale Dockens	MT-EC	HB252		
Dick GREEN	SELF	HB-252	X	
Lorraine Dow, Herbert	Self	HB-252	X	
Jim Hartman	self	HB 252		
[illegible]	Self	HB 252	X	
Tom N Jamkoy	Self	HB 252	X	
R L Bancroft	self	H 253	X	
Jim Shanny Jr	SELF	HB352	X	
Paul Befumo	Montanans for due process	HB 325	X	
Wayne Mueller		HB325		
Tom Simkins	Self	HB 27		
[illegible]	SELF	HB252	X	
Ken Hobbert	K-G Kobelt Est	257	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 2-7-97

H ~~SENATE~~ COMMITTEE ON B+L

BILLS BEING HEARD TODAY:

HB 252 - HB 407 - HB 410

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Larry Wood	Hurenws+Wage Bldg.	252	X	
Ruby J. Lapelle	Linafelter Const & Carpenter Union 286	252		X
Ronda Carpenter	MT Housing Providers	252		X
Claudia Clifford	self	410		X
Lynne Egan	self	410		✓
Beth O'Halloran	self	410		✓
Lynn Robson	Self	410		✓
BERT SAREE	SELF	410		✓
Bobbie S Rossignol	self	252	X	
Sandy Citzinger	Montana Women's Lobby	410		✓
Wayne Eklund	self	252		✓
Russell J. Eklund	Eklund Ent	252		✓
Sam Yates	Yates Construction	252		✓
John Hawke	self	252		✓

VISITOR REGISTER

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REGISTER.F10

DATE 2-7-97

H ~~SENATE~~ COMMITTEE ON B+L

BILLS BEING HEARD TODAY:

HB 252 - HB 407 - HB 410

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jeff Witt	Witt Const	252		✓
Sue Hennessy	HBA Great Falls	252		✓
Ron L Beele	Luss Werk	252		✓
LEON CHAMBERS	T&T CONSTRUCTION	252		✓
[illegible]	self	410		✓
Laura Stafford	self	410		✓
Melissa BROCH	self	410		✓
ROGER HAGAN	OFFICER AND ENLISTED ASSOCIATIONS OF N.G. OF MT	410	✓	
Mary Arnold	self	410		X
Lou Mare	ICCW	410		✓
Angela McDannel		410		✓

VISITOR REGISTER

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REGISTER.F10

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

_____ SUB-COMMITTEE DATE 2-7-97

BILL NO. HB252 SPONSOR(S) _____

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	Support	Oppose
SANDRA SHOOK Sandra Shook CHARLO	self	X	
Dell Palmer Dell Palmer Charlo	"		
Dan Hutchings 1717 E. Seventh Ave Helena	MBIA		✓
Don Judge PO Box 1176, Helena	MT STATE AFL-CIO		✓
Sandi Nichols 1304 W Koch Bozeman	SW Montana Building Trades Assoc		✓
Doug Richmond 649½ Idaho Butte			✓
John Novotny 2290 E. Sierra Rd, Helena	Self	✓	
Jim Carras 1947 E. Broadway Msla	Carras Const Co		✓
Steve Kramer 335 Carnel, Blgs MT	Pioneer Ent. LLP		✓
DON CHANCE	MT. BUILDING IND ASSC.		✓
Jacqueline Lenmark	Am. Ins. Assn		✓
Laurence Hubbard	State Fund		✓
Audit Sec.			
Sandra Wong 780 Judicial Billings	Billings Homebuilders Assoc./Security Bank		X

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on February 19, 1997, at 8:00 AM, in Room 104

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: None

Executive Action: HB 78; HB 442; HB 519; HB 513; HB 517; HB 539; HB 541; HB 543; HB 545; HB 252; HB 500;

EXECUTIVE ACTION ON HB 252

Motion: **Rep. Sliter** moved do pass HB 252.
{Tape: 2; Side: 2; Approx. Time Count: 6.2; Comments: None.}

Motion/Vote: **Rep. Sliter** moved to adopt Molnar amendments. Motion carried 16-3. **Reps. Krenzler, Ewer and Tuss** voted no.
{Tape: 2; Side: 2; Approx. Time Count: 6.6; Comments: None.}

Motion/Vote: **Rep. Sliter** moved do pass HB 252 as amended.
{Tape: 2; Side: 2; Approx. Time Count: 10.5; Comments: None.}

Motion/Vote: **Rep. Pavlovich** moved to table HB 252. Motion failed 9-10.
{Tape: 2; Side: 2; Approx. Time Count: 11.0; Comments: None.}

Discussion:
{Tape: 2; Side: 2; Approx. Time Count: 12.0; Comments: None.}

Vote: Vote on do pass as amended passed on roll call vote 11-8.
{Tape: 2; Side: 2; Approx. Time Count: 12.0; Comments: None.}

EXECUTIVE ACTION ON HB 500

Motion: **Rep. Sliter** moved do pass HB 500.
{Tape: 2; Side: 2; Approx. Time Count: 27.9; Comments: None.}

Motion: **Rep. Sliter** moved to adopt Sliter amendments.
{Tape: 2; Side: 2; Approx. Time Count: 28.; Comments: None.}

Discussion:
{Tape: 2; Side: 2; Approx. Time Count: 28.8; Comments: None.}

Motion: **Rep. Sliter** moved to segregate amendments 7 and 9.
{Tape: 2; Side: 2; Approx. Time Count: 31.; Comments: None.}

Vote: Vote on segregated amendments carried 10-9.
Tape: 3; Side: 1; Approx. Time Count: 2.0; Comments: None.}

Motion: **Rep. Sliter** moved do pass HB 500 as amended.
{Tape: 3; Side: 1; Approx. Time Count: 2.3; Comments: None.}

Discussion:
{Tape: 3; Side: 1; Approx. Time Count: 2.4; Comments: None.}

Motion/Vote: **Rep. Tropila** moved to table HB 500. Motion carried roll call 13-5. **Rep. Bookout** did not vote.
{Tape: 3; Side: 1; Approx. Time Count: 21.1; Comments: None.}

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN THOMAS F. KEATING**, on March 13, 1997, at 3:20 P.M., in Room 325

ROLL CALL

Members Present:
Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 252; 3-5-97
Executive Action: None

HEARING ON HB 252

Sponsor: **REP. BRAD MOLNAR, HD 22, Laurel**

Proponents: **Riley Johnson, National Federation Independent Business**
Russ Penkal, Independent Contractors of Montana
Walt Dupea, Representing Self
Delbert Hostetter, Representing Self
Jenny Dodge, Best Dan Painting
Bob I. Davies, Representing Self
Charles Lorentzen, Representing Self
Dick Rossingol, Rossingol Construction
Dean Randash, NAPA Auto Parts
Kevin Nelson, Geo Tech
Dick Skees, Skees Construction

John Novotny, Novotny Land & Cattle
Jim Eberly, Representing Self
Ron Pearson, Constructive Remedies
Darrell Adams, Representing Self
Donald Kramer, Wattnem Construction
Alex Martin, Martin Construction
Steve Hadnagy, Buffalo Horn Trucking
Gene Ackersen, Gene's Electric
Bob Becker, Bob's Cabinet Shop
John Bloomquist, Montana Stockgrower's Association
Dave Cole, DC Construction
Dennis Roehl, Representing Self
Joe Schlemmer, Representing Self
Sam Turley, S & S Mobile
Rod Becker, Becker Cabinet & Miller
Steve Howeth, S & K Construction
Dick Green, Representing Self
Gary Arnold, GL Arnold Concrete
Larry Brown, Agriculture Association

Opponents: **John Denherder, Representing Self**
Laurence Hubbard, State Fund
Carl Schweitzer, Montana Contractors' Association
Carl Hafer, Representing Self
David Owen, Montana Chamber of Commerce
Chuck Hunter, Department of Labor & Industry
Don Chance, Montana Home Builders' Association
Jacqueline Lenmark, American Insurance Association
Don Allen, Coalition Workers' Compensation System Improvement
George Wood, Montana Self-Insurers' Association
Dave Cogley, Representing Self
Don Judge, Montana State AFL/CIO

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, Laurel, said this bill is designed to find resolutions for proponents and opponents for the contractor's registration for the purpose of mitigating liabilities.

HB 252 not only eliminates the old liabilities created in the old SB 354, but as a bonus, restores the Constitutional Rights that were taken away.

It also eliminates the upward migration of liability from one contractor to another. Further, HB 252 limits the liabilities of hiring an independent contractor.

The binding requirements that a contractor who is contracting with an unregistered contractor is liable for the other contractor's employees wages and fringe benefits is repealed.

The rights against self-incrimination is restored.

The need to seek permission of the government to enter into common occupations is repealed.

A bond which was attached to put a contractor out of business is repealed.

The right to use the court system and have a jury trial is restored.

The right to publish ads as desired without government oversight is restored.

The right to privacy in your own home and in the government's files is restored.

The passage of this bill protects the people of Montana from having their projects stopped and property seized without due process.

The passage of this act also repeals the provision that a government employee has the right to enter private homes without a warrant to look for unregistered contractors.

REP. MOLNAR stated old SB 354 did begin a process of wondering how to limit the upward migration of liability and the hiring of independent contractors. We, the representatives of the people, created the liability in statute. We need to reverse or repeal those statutes. HB 252 does that for us.

He would appreciate the bill to be considered with the amendment presented. **(EXHIBIT 1)**

Page 1 states "each person in this state", "including a contractor" is stricken. It continues to read, "is considered to be by current state law an employee". This is how an independent contractor climbs the ladder as a contractor, then falls down the ladder as an employee. We make them wear both hats, so in striking this, a contractor can be considered an employee. Nowhere in **REP. MOLNAR'S** more than 20 years as a contractor has he been a contractor and an employee simultaneously.

On page 5 subsection (c) is stricken. The contention in this is that this used to state that "an individual performing services for remuneration is considered to be an employee under this chapter". The burden of proof is on the independent contractor to prove he does not have an uninsured employee. **REP. MOLNAR** said this is reversed in the bill to state, "an individual performing services for remuneration who represents to the public that the individual is an independent contractor, is considered to be an independent contractor and not an employee". In other words, the burden of proof lies on the person who would allege otherwise. That contractor is considered innocent until proven guilty, the same as in any other arena of law.

"An individual representing to the public, that the individual is an independent contractor may not make claims against an employing unit". People should be responsible for themselves and file claims on their personal medical insurance.

"The Department may not take action against a person relying on a claim of independent contractor status pursuant to this section". **REP. MOLNAR** stated that this means when a person comes into your business to audit, and they ask about a payment made to an independent contractor, if that person does not meet their criteria of 'independent' or 'business' he is an uninsured employee.

"The Department may not adopt rules to implement this section". **REP. MOLNAR** said obviously, they will be audited by the Department of Labor, Workers' Compensation, Department of Revenue, and the Internal Revenue Service. All of those base their determinations on the two words 'independent' and 'business'. He stated we do not need thirteen pages to define those two commonly used words.

He also stated that a person who represents the public is called an independent contractor. An independent contractor is also assumed to be an employee. **REP. MOLNAR** said our laws do not match up. In referring to page 7, under subsection 3, he brought the two parts of the law together. He has not broadened the law, but has narrowed the focus for the people.

Referring to page 8, subsection (c), he said when an application is approved by the Department, or when the contracting parties agree to an independent contractor status, we have not made it easier for people to be independent contractors. This precludes the applicant from obtaining benefits under this chapter. Under subsection (e), page 8, if the independent contractor violates this, he pays a $1,000 fine per infraction. This is not a "get-out-of-jail-free" card. That independent contractor is held liable for his errors and omissions, not the person who unwittingly hired him.

REP. MOLNAR said for the person who contracts work out the law used to say if a contractor hired another contractor who had no insurance, that the first contractor was liable. It is not the independent contractors of Montana who are forcing this issue, it is the Department who is forcing it. This is not right. Under the last section of HB 252, if an uninsured contractor doesn't have insurance on his employees, he is liable.

It is not now, nor has it ever been, proper policy for any government to force artificially created liabilities on the people for the purpose of selling insurance plans. If private business tried to do that, we would throw them in jail.

Informational Testimony:

David Hoffman, Attorney, Dillon, stated one of his clients is a Montana corporation called Intermountain Systems, Inc. which is owned wholly by **REP. BRAD MOLNAR. REP. MOLNAR** asked **Mr. Hoffman** to talk about the status of the law suit that he filed in February of 1996 challenging the Constitutionality on numerous grounds of SB 354.

Mr. Hoffman said he is not in a position to really comment on **REP. MOLNAR'S** HB 252 today, so he is not appearing as a proponent, but to give information regarding the status of the law suit on SB 354.

In February of 1996 he filed a law suit on behalf of Intermountain Systems in Beaverhead County challenging SB 354 on numerous Constitutional grounds. A hearing was held in July after Judge Davis had issued a temporary restraining order barring the Department of Labor from enforcing any part of Chapter 500. The opponents were represented by the Attorney General's office in the State of Montana appearing in defense of the bill as they are obligated to do. After that evidentiary hearing was held, **Judge Davis** issued his temporary restraining order again, this time barring enforcement on only that portion of Chapter 500 which was codified in Title 39, Chapter 9 which is now known as the Contractor Registration Act.

In barring enforcement of that portion of the Act, **Judge Davis** found sufficient evidence to conclude that enforcement of the Act would likely violate numerous Constitutional Rights of the plaintiff and all others similarly situated. All other contractors who have failed or refused to register under this Act. Those Constitutional violations included, among other things, the violation of their right to privacy, the violation of their right to due process, and the violation of their right to be free of the imposition of excessive sanctions.

The State of Montana appealed that temporary restraining order to the Montana Supreme Court which decided it in Intermountain Systems' favor in all respects. They returned the verdict to **Judge Davis** without reservation for a final determination on the merits. **Judge Davis** has not issued his final opinion on the merits, however, **Mr. Hoffman** is confident that when he does, he will strike Chapter 500 in its entirety because when he strikes the offending portions of SB 354, what will be left is a bill that is so scattered and disconnected that it will be unenforceable.

Proponents' Testimony:

Riley Johnson, National Federation Independent Business, said this bill has been a hot topic of **NFIB's** over 8,000 members in Montana. It has generated many calls and a tremendous amount of mail. They have also surveyed their members and this is how

their determination is solely made. They do not make a determination through a Board of Directors. Their position on all legislation is determined by a ballot of their members.

They support HB 252 with emphasis on one section. This is the elimination of the 'C' test. In September **NFIB** surveyed its many members in Montana on the issue of the Construction Contractor Registration. From that poll 52% of their members voted to repeal the Construction Contractor Registration Law, 37% no, and 11% undecided, which is almost a 50-50 split. As a result, **NFIB** cannot take a strong position on that portion of HB 252.

However, in January, they surveyed the members again asking about the elimination of certification for independent contractors. The results were 80% in favor of the repeal of test 'C', 9% were against it, and 11% were undecided. Based on this, they strongly support the elimination of the 'C' test which has caused a tremendous amount of problems, a lot of grief and misunderstanding.

Mr. Johnson stated one other portion of this bill they greatly support is the elimination of the upward mobility of liability. **Russ Penkal, Independent Contractors of Montana,** said his group formed as a result of the passage of the Contractor Registration Law which HB 252 repeals. They support HB 252. **(EXHIBIT 3)**

He referred to **(EXHIBIT 4)**. HB 252 identifies an independent contractor by the 'A', 'B' tests, by publically entering into a contract verbally or in writing, or by having an exemption from the State. In the past that has been voluntary. The Department has distributed **(EXHIBIT 4)** and **Mr. Penkal** stated they believe this is a good idea. It is an exemption and at the bottom is a place for signatures which will help establish relationship in writing.

Walt Dupea, Bigfork, Representing Self, supported HB 252. **(EXHIBIT 5)**

Delbert Hostetter, Manhattan, Representing Self, had three reasons he wanted to see this bill pass.

He stated one of the very real problems and concerns in the State of Montana is the lack of affordable housing. With added restrictions and penalties and the time it takes to stop to be interviewed and harassed by the State Departments, it will push the cost of that housing up. On Tuesday night, in a Holiday Inn in Bozeman, over 100 community leaders, including city commissioners, hospital administrators, physicians, registered nurses, college professors, lawyers, teachers from the elementary and the secondary education, as well as others, met for a seminar on healthy communities. The moderator requested they separate into groups of five and report the five things they would like to see accomplished by the year 2015. All five groups came up with identical requests for the first two. The first was a good

education for our children, the second was affordable housing so that our children can afford to stay and live in Montana if they choose to.

Mr. Hostetter said the second reason he would like to see this bill pass, is that it repeals a very grossly unfair law, which is the upward migration of liability. It is not fair or democratic to be penalized if he hires someone to work on his project and he violates the law by not paying Workers' Compensation on his help.

He stated the third reason is that he is opposed to excessive taxation. Our current Governor, Marc Racicot, and his immediate predecessor, ran for office on a plank which included the promise of less government. SB 354, Contractor Registration that went through the Legislature two years ago added to big government, promoted a program which will cause increase in taxes according to the fiscal report that **Mr. Hostetter** received. It would take an additional half million dollars per year to support this program. That would come out of the General Fund or taxpayer's pocket. Once a government program becomes established, it has a tendency to grow.

HB 252 will correct a lot of wrongs. A vote against this bill is a vote for higher taxation, unprecedented government intrusion in our private lives and businesses, and it will push the hope of owning a home in the State of Montana farther out of reach.

Jenny Dodge, Best Dan Painting, Representing Self, spoke in support of HB 252. **(EXHIBIT 6)**

Bob Davies, Bozeman, Representing Self, said there is a perceived problem, that is non-compliance with Workers' Compensation and Unemployment Insurance. Since the duty of the Legislature is to legislate, **Mr. Davies** said they must figure the laws on the books are not sufficient and we need new laws.

Rights are violated in SB 354 and all the problems that entails. The more laws we have that trample freedom, the more they will be ignored and the less respect will be found for law in general. If it perceived the current laws are not being enforced, that is where attention should be directed, not in punishing everyone, especially the law abiding. There is a close parallel between the contractor bill passed by the last legislature and those who would take away our gun rights because of a few misused guns. In Montana we understand that argument.

Charles Lorentzen, Kalispell, supported HB 252. **(EXHIBIT 7)**

{Tape: 1; Side: B; Approx. Time Count: 4:03 P.M.}

Dick Rossingnol, Rossingnol Construction, Lolo, was also in support of HB 252. **(EXHIBIT 8)**

Dean Randash, NAPA Auto Parts, Helena, supported HB 252. **(EXHIBIT 9)**

Dick Skees, Skees Construction, said he has been contracting 31 years. He has a small business of three employees.

They can possibly build three houses per year. They build custom homes for individual customers. One thing that hasn't been mentioned is the pressure on a small contractor. **Mr. Skees** said he gets up at 5:30 a.m. and he works six days a week and is lucky if he makes it home by 7:00 p.m.

He said he loves Montana, but it is difficult to live here and takes a lot of work to stay alive in this State. Every contractor will agree that there is pressure every 30 days. On the tenth of the month, everything they buy has to be due net in 30 days. OSHA comes on the job site and are penalized if the ground cord isn't correct, if the ladder isn't correct, if a safety guard is off a saw. They have to deal with state inspectors and permits, city inspectors, and they are also governed by the private sector. They have bank inspectors who come on the job site and they have cameras which photograph every phase of the structure.

Mr. Skees said their biggest headache in making a living is to accomplish the greatest amount of quality in the shortest period of time.

Also, to regulate this is to create another whole bureaucracy. There are three compliance officers to put in the field now, which will be six in five years and ten in a short period of time after that. There will not be a legislator strong enough to cut this Department.

Mr. Skees said the biggest fear he has as a contractor, is that one of these compliance officers who **Mr. Skees** feels would be somewhat of a predator because he would have to have something wrong to create funds to keep his job. If he stops the job for even a week, this sets back production time and stops him from paying his 10th-of-the-month bills, and to keep his reputation with his suppliers. If this happens, his business will go under. He only has three employees, but these people work very hard and the deductions which come out of their paycheck and the taxes they pay on their property, help feed the system in this state. He asked the Committee not to put another bureaucracy on this industry. We are now over-regulated.

Mr. Skees said regarding his liability insurance, every single year they are required to go through an audit through the private sector on their liability insurance. He has to have a certificate of insurance of liability for every painter, wallpaper hanger, tile man, any contractor which he hires to do a project for him.

It is the same with Workers' Compensation. In the past three years, **Mr. Skees** has been audited twice. It is the same principal. They will go through his books and pull out every single check he has written to some small contractor who performed a duty on one of the projects. If that individual does not have a current Workers' Compensation certificate, or a certificate stating he is an independent, that individual's entire amount of checks that were written to him go into **Mr. Skee's** payroll, which is also how Workers' Compensation premiums are paid.

There are so many restrictions and we do not need more. It is so difficult to make an income in the State of Montana. **Mr. Skees** said he was present to plead for no more regulation. This is a very competitive field.

John Novotny, Novotny Construction, Helena, said he is a rancher in the Helena valley and does part-time carpenter work.

He recently attended a meeting with the Montana Stockgrowers. He stated they are somewhat in favor of the independent contractor rules due to the fact they exempted agriculture people.

Mr. Novotny said he was told he was protected if someone he hired were to work on his barn, and he fell off and got hurt. When he is hired he is considered an independent contractor and when he falls off, he is an employee. He said there are too many lawyers and they will find a way to take him to court in this situation.

This all places more government on our backs. He said he wants them off his back and out of his pocket.

Jim Eberly, Custom Paint, Bozeman, said he has been a painting contractor for 6 years and in the trade for 12 years. He supports HB 252. **(EXHIBITS 10 & 11)**

Ronald Pearson, Constructive Remedies, Helena, said his company primarily builds custom homes and does remodeling work. They are a small operation.

He said he has three sons who would like to enter into this same field of industry and have the same opportunities he has had in Montana. He has lived in the Helena area 20 years and he would like his children to have the same opportunities.

Russ Wattnem, Wattnem Construction, Helena, said he has been in Helena 24 years and asked the Committee to pass HB 252.

REP. DARRELL ADAMS, HD 84, Columbia Falls, stated he would like to go on record as being in favor of HB 252.

Donald Kramer, Wattnem Construction, Helena, said he supports HB 252.

Alex Martin, Martin Construction, Belgrade, also supported HB 252. **(EXHIBIT 12)**

John Krosky, Krosky Repair, said he supports HB 252.

Steve Hadnagy, Buffalo Horn Trucking, Bozeman, said he is in support of HB 252. Old SB 354 regulated gravel trucking. One type of truck dumps gravel from the end and they other type dumps gravel out of the belly. He said both trucks do the same thing. They were told if they owned the trucks which dumped gravel out the belly they had to register, but if they owned the trucks which dumped gravel out the end they were not required to register.

Gene Ackersen, Gene's Electric, supported HB 252.

Bob Becker, Bob's Cabinet Shop, Butte, said he is in support of HB 252.

John Bloomquist, Montana Stockgrowers' Association, stated with the passage of SB 354, he has had more grief over that particular piece of legislation than anything in his time representing the Stockgrowers. They support the elimination of the 'C' test.

In terms of trying to define the independent contractors and trying to define the presumptions, they urge the Committee to support HB 252. They also ask the Committee's support in eliminating the upward mobility of liability.

Dave Cole, DC Construction, Whitehall, said he has been building for more than 20 years and he agrees with all the prior testimony.

Dennis Roehl, Drywall Contractor, Helena, said he has been in business 33 years and supports this bill. He believes our freedoms are at stake.

Joe Schlemmer, Representing Self, said he is an independent contractor and has always maintained the state agencies to be his friend, but they have not been his friend but more his adversary. For the same reasons of the testimony already given, he urges the Committee to support HB 252.

Sam Turley, S & S Mobile, Clyde Park, supports HB 252.

Rod Becker, Belgrade, said he also supports this bill.

Steve Howeth, Representing Self, said he is a registered contractor and asks for support of HB 252.

Dick Green, Representing Self, said he was involved to a great extent with **REP. MOLNAR** in his efforts to bring his law suit and has been involved in various meetings since the 1995 legislative session. More than 200 people showed up at a meeting in Hamilton

they held. He has had communication from constituents in HD 61, HD 60 and HD 69, which is the entire Bitterroot Valley. The feeling is very strong that SB 354 is something we need to totally repeal.

Gary Arnold, GL Concrete, Lolo, said he is for HB 252.

Larry Brown, Agricultural Preservation Association, stated his association supports HB 252 and oppose SB 354. A number of the agricultural community are contractors who fill in the downtime in the winter to do contracting, whether it be locally or through trucking.

Opponents' Testimony:

John Denherder, Representing Self, said this past summer he hired a siding contractor. He was an independent contractor but never did the work. He had three crews who he forced to sign statements saying they were independent contractors and were insured. They were not. He expressed his concern over the liability of someone falling off a ladder and his homeowner's insurance would not cover anything that would disable someone.

Mr. Denherder said he went to the Labor Department and inquired of how Montana protects its citizens. He was told there was only four officers in the State of Montana to cover the whole state and that it would take him months to get to the bottom of his problem. He gave the Department the signed statements from the contractors and has never found out what the outcome of this case was. He comes as a concerned citizen to protect other citizens.

Laurence Hubbard, State Fund, opposed SB 252. **(EXHIBIT 13)**

Carl Schweitzer, Montana Contractors' Association, said the reasons he opposes this bill are from a historical perspective.

He asked if anyone felt the Workers' Compensation rates for construction are too high? He said that is what has gotten us into this mess. Construction is a dangerous business. Four or five years ago, the Workers' Compensation rates for construction workers are the highest than any other occupation. One of the reasons housing costs so much is because Workers' Compensation rates are so high. They are high because construction is a dangerous business and there is a lot of abuse out there in the system.

Mr. Schweitzer stated one of the arguments has been that people want less government interference but they also want to make sure everybody is complying with the Workers' Compensation laws.

{Tape: 2; Side: A; Approx. Time Count: 4:42 p.m.}

He stated SB 354 was intended to help provide some regulation and enforcement of the law, and he has never heard from **REP. MOLNAR**

regarding how he intends to enforce the Workers' Compensation laws in the State of Montana.

Mr. Schweitzer said in HB 252 we are taking a giant step backwards. We are going to be asking for higher Workers' Compensation rates and higher costs in construction. Our home costs will go up because of the Workers' Compensation rates.

He said he represents 100 contractors in the State of Montana. Normally when someone goes to work for them, the first thing they have to prove is compliance with the Workers' Compensation laws of the State of Montana. They hoped that overall Workers' Compensation rates would come down.

He does not believe the proponents of this bill are seeing the total picture. If they have employees, would they like to compete against somebody who isn't paying Workers' Compensation?

For the above reasons, he opposes HB 252.

Carl Hafer, Representing Self, opposed HB 252. **(EXHIBIT 14)**

David Owen, Montana State Chamber of Commerce, said he finds his Board skeptical of nine out of ten pages of this bill but is also supportive of **REP. MOLNAR** in a couple points he is trying to make. **Mr. Owen** said we need to change SB 354 from two years ago and he has done us a favor in focusing us on that.

He said we are more inclined to back some basic registration, something that is simple. They would strongly like to support the last part of HB 252 and that is that businesses being the 'cops' to enforce regulations on other businesses. He said his Board said they are tired of being the long arm of the law and tired of being the enforcers on one another.

Chuck Hunter, Department of Labor & Industry, said they are in opposition of this bill for two reasons, one dealing with contractor registration, another dealing with the independent contractor changes which are made.

He stated the reason why we have a contractor registration program is that in the construction industry, there are high injury rates and an unlevel playing field. There is a host of problems with coverage in the construction industry. People are misclassified. There is a question of whether or not they have Workers' Compensation coverage for their employees. SB 354 is a result of these issues. Repealing this act does not solve any of those problems.

For those reasons, the Department believes the proper approach is to amend the Contractor Registration Act in such a way to make it less onerous, less costs to comply with and to make it easy.

Also, **Mr. Hunter** said the independent contractor law is difficult to follow particularly for a layman. The reason we have 13 pages of rules which define who is and who is not an independent contractor, or because there is 40 or 50 years of case law which define those, we have taken the pertinent elements out of the case law and placed them in administrative rules so laymen employers can understand who is and who is not an independent contractor. This bill takes those statutes and turns them into a complete mess.

Mr. Hunter stated first, there is a change in presumption. When you hire someone and pay them to do work for you, they are your employee unless you can prove otherwise. As convoluted as the 'A,B' test is, at least you have a standard that people have come to recognize and know over time. The way HB 252 would have that read is that if a person represents that he is an independent contractor, then he shall be one. That term is defined nowhere in the law or rule and people would be forced to rely just upon what is stated in the law, and perhaps knowledge of Supreme Court cases.

He also said the part that says the Department cannot take any action against a person relying on a claim of independent contractor status leaves the Department and other people in the position, any time there is an injury or accident on a worksite in construction or other industries, all the employer has to do is merely claim he was relying on someone's word that they were an independent contractor to prevent any further investigation to that. **Mr. Hunter** stated that they see, week in and week out, people come into their office saying they need the exemption because their employer is not going to pay him wages until they have one. No rules leaves everyone in the position of not knowing what the rules of the game are.

He said in the bill there is the requirement that an independent contractor can either buy a Workers' Compensation policy for himself or can get the independent contractor's exemption. We now have the clause under this bill where merely if the two parties agree they have an independent contractor relationship, that will be sufficient. **Mr. Hunter** said under this bill he does not know whether a person needs to have this exemption or policy, or if a mere agreement is enough. They have worked hard to get attorneys out of the Work. Comp. system and in the view of the Department of Labor, the changes in this independent contractor definition, merely lays out the welcome mat to bring them back in.

Don Chance, Executive Director, Montana Building Industry Association, spoke in opposition to HB 252. **(EXHIBIT 15)**

Jacqueline Lenmark, American Insurance Association, said the American Insurance Association is a trade association comprising some 250 property and casualty carriers. The companies she

represents write approximately 40% of the market share of Workers' Compensation in Montana. They oppose HB 252.

She commented on what the affects of HB 252 would do in terms of insurance availability in Montana. Many proponents have spoken about their desire to be free from regulation and she said those Montanans gave up that freedom when they made the compact with workers in enacting the Workers' Compensation Act. There was a give and take in the enactment of that Act. Workers gave up the need to prove negligence and at that same time, employers gave up a defense to their own negligence. Workers accepted limited recovery, employers gained the protection of not having to pay that full amount of damages.

Ms. Lenmark said under current law, Montana citizens still can be free from regulation. All current law asks is that they make that declaration first. Insurance companies ask for an affirmative declaration from those persons who want to be exempt from the law. This is an important policy decision. She stated if this bill is allowed to pass, she believes we are inviting more litigation, leaving more workers unprotected, and introducing more uncertainty in determining the risk that insurance companies are insuring. When you do those things, you are adding cost to the Workers' Compensation system, also making those insurance products less available for Montanans who choose to insure, introducing volatility into the Workers' Compensation market, putting more pressure on the State Fund which is our insurer of last resort.

She also asked the Committee to consider the welfare of the workers that this system is intended to protect. This bill will be lessening those protections, making them less available to the very persons this system is designed to benefit.

Ms. Lenmark said Montana is not unique in this problem. This is a national issue and states have variously attempted to treat it. She has testified on this bill in the House and the irony of this issue for Montana is that at least right now her association is using Montana's current law as the model.

Her association believes the current law is appropriate. She does not believe the registration procedure is any more burdensome than applying for a driver's license, a hunting license, for obtaining a license to practice medicine or to practice law. The benefit to Montana workers justifies that little bit of effort.

She asked for a 'do not concur' recommendation.

Don Allen, Coalition for Workers' Compensation System Improvement, said the Coalition's main concern is for the system to work. They did not get involved in the contractor's registration issue until the home builders and contractors agreed on a bill they wanted to come forward with.

He said it was a terrible mistake to deal with 'C' in terms of the independent contractor issue because many of the complaints and calls which took place was a result of the confusion over which of those small businesses and independent contractors were really at risk. Many calls were about the independent contractor issue but they were really calling about the contractor registration part.

Mr. Allen said none of the contractors want a lot of paperwork and meddling by government. The State Fund and private insurers' testimony reflected why we need to be careful in passing this legislation. He thinks this bill will make matters worse, rather than trying to improve them.

George Wood, Executive Secretary, Montana Self-Insurers' Association, said they arise in opposition to this bill.

He said the independent contractor section of this bill, as written can cause nothing but difficulty in litigation for those who have to put it into practical usage.

They would like to see changes in the upward mobility of liability but would like to point out if the upward mobility is not provided, **Mr. Wood** believes we are obligated to provide benefits of some kind for the employee.

He asked what would happen when somebody's medical bills become large and they have no wage. On page 10 of this bill, he said when an employer contracts the work to be done as specified, the contractor and the contractor's employees may not come under the same plan of compensation adopted by the employer.

Mr. Wood asked if the employer is in Plan 3 and the independent contractor has three employees where is he going to get his coverage? That man's option is the last resort insurer, and that is the State Fund. He thinks this bill says that both cannot be in the same plan.

Mr. Wood believes there is enough inconsistencies in the bill that is should not pass.

Dave Cogley, Representing Self, Helena, said he has dealt with this issue for quite awhile.

In 1983 the independent contractor exemption was proposed as a way to try to identify who is and who isn't an employee. That law still appears and is on page 7 and 8 of HB 252 and did not work very well.

Mr. Cogley said he thinks to go into the definition and liability provisions as **REP. MOLNAR** has done, goes way too far and interjects a lot more confusion. He believes there is a common goal in trying to prevent the upward migration of liability. He thinks SB 45 is a better way of dealing with this issue, as it

specifically addresses only construction contractors and does not mess with all the other kinds of independent contractors.

He asked the Committee not to pass HB 252.

Don Judge, Montana State AFL/CIO, pointed out his position on this bill is a unanimous position adopted by the delegates to their last convention. Thousands of building and construction trades workers represented through their unions were present.

Mr. Judge said there is a problem of fairness that goes beyond the bidding war in the work force. It gets into the issue of who pays for Workers' Compensation in the State of Montana.

In Montana we have never taken a survey to see how bad fraud is amongst Workers' Compensation. Fraud is not just employees who abuse the system and claim injuries that don't actually occur on the job, but fraud occurs when employers don't pay on the appropriate number of employees or on the appropriate classification of workers. **Mr. Judge** said in California fraud has been found in about 70% of construction contract work. It amounted to about $2 billion lost to the California system.

Mr. Judge said there are hard working people in Montana who would like to be free as much as possible from the burden of regulation and the high cost associated with Workers' Compensation. Contractor registration was not designed under the law to take people who are not independent contractors and claiming they are independent contractors.

Regarding the statement made about employers being tired of policing one another, **Mr. Judge** asked who would you rather have 'police' you, the Department of Labor or each employer making sure the employer's subcontractors have complied with the law? If the State is going to do it we are going to have to put a lot of money into the Department of Labor and a lot of those little 'policemen' out there to do that job.

Also, in referring to **Don Chance's** statement that 23 out of every 100 employees are injured in the building construction trade, **Mr. Judge** said that is a pretty high ratio of injuries to workers. In this situation you have independent contractors asking to absolve them from any obligations to provide Workers' Compensation coverage who also claim they are independent contractors. They are also asking to hold down the migration of liability for any injuries which occur. Somebody is going to end up paying the costs for those workplace injuries, whether it is all taxpayers in the State of Montana through the social system that we have or whether it is Workers' Compensation for those employers who do actually pay Work. Comp. premiums on their employees, are maybe it is the folks who have the sufficient amount of liability insurance to take care of those kind of injuries and wage losses.

Mr. Judge said what will happen with HB 252 is that we will create a lawyer's paradise. He stated this bill is not going to solve the problems for the Workers' Compensation system, for the independent contractors or for the upward migration of liability. He encouraged a 'table' or 'do not pass' on this bill.

{Tape: 2; Side: B; Approx. Time Count: 5:18 p.m.}

Questions From Committee Members and Responses:

SEN. FRED THOMAS stated on page 5, what seems to be an important part of the bill is the independent contractor defined. Line 14 indicates that an individual representing to the public that the individual is an independent contractor may not make claims. He asked **REP. MOLNAR** what type of claims these are.

REP. MOLNAR said we are talking about Unemployment Insurance claims and also Workers' Compensation claims.

SEN. THOMAS said in the Constitution, section 16, under 'Administration of Justice', it states that no person should be deprived of this full legal redress for injury incurred in employment for which another person may be liable. Then it exempts fellow employees and an employee's immediate employer if he provided Workers' Compensation. He said it seems to him that HB 252 is in direct contrast to the Constitution.

REP. MOLNAR said it is not, and certainly no more so than the laws passed in 1983. A person is also a business, and a business may not make a claim. They may for liability, but not for under Workers' Compensation. A person under contract, if the conditions are met, has given up his personhood. **REP. MOLNAR** stated takes place every day in his business. He signs a contract with someone and when he does that he gives up the right to file a claim against that person. It is not a violation of Constitutional Rights.

SEN. CASEY EMERSON stated that the Committee heard **Mr. Hunter** state with all of this going on, there is so much case law from the Supreme Court. It seems **SEN. EMERSON** that most of the case law is based on statute, therefore, he thinks a lot of that can be negated. He asked **REP. MOLNAR** if he had any advise regarding this.

REP. MOLNAR said our law states the upward mobility of liability is mandated. Then they state the courts have no choice. Then a bill is introduced which says it cannot go up, if they read and interpret it properly, the only assumption is that we have stopped that and the old case histories cannot be relied on.

SEN. EMERSON stated he hears quite often about what **Mr. Judge** said regarding someone getting injured at work, he has to be taken care of because he is going to sue or find a way to do something, whether he is injured at work or on the golf course,

why isn't he concerned about finding a law that will take care of him.

Don Judge responded there are some differences, and clearly one is the difference that **SEN. THOMAS** pointed out in the Constitution. The Constitution of the State of Montana makes it very clear that a person cannot deny an employee or a person who is injured in performance of employment, the right to full legal redress. The only caveat it gives to that situation, is if you have that employee covered with Workers' Compensation. Otherwise, that person has the total right to go to court. In the situation on the golf course, he would hope that person would have medical insurance before they went golfing. The difference is that unless he could prove that the golf course had a golfer's hole and he stepped in it, then he would have the right to sue the golf course for not providing a safe place to play golf.

SEN. EMERSON said he heard **REP. MOLNAR** say that as a private contractor he is not an employee.

Mr. Judge responded the Constitution states the courts of justice are open to every person and speedy remedy shall be afforded for every injury of person, property or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable, except as to fellow employees and his immediate employer who hired him, if such immediate employer provides coverage under the Workers' Compensation Laws of the State.

SEN. EMERSON said that was written by Dahood and still says an employee and employer.

CHAIRMAN KEATING stated on page 9, line 25 and 27, the words 'a contractor' appear, and he is unable to locate where contractor is defined in the bill. Where contractor is defined in the statute it is repealed in the bill. He asked **REP. MOLNAR** his definition of contractor as it is used in HB 252.

REP. MOLNAR said the definition of contractor in SB 45 and old SB 354 is being repealed. However, that is a duplication of the term contractor which is defined in other statutes. It is at the beginning of the section of the old bonding requirements.

CHAIRMAN KEATING said the bonding requirements are repealed.

REP. MOLNAR stated the bonding requirements are repealed but not that part of the definition.

CHAIRMAN KEATING said we still have an Uninsured Employer Law and the Department of Labor has been receiving claims for Workers' Compensation injuries under that law. The Department has located the employer or the person who is held as an employer for an employee and collects double premiums and the cost of the benefits, then pay the injured worker for the medical benefits

and for wages lost. He asked **Chuck Hunter** if those claims affect Workers' Compensation rates in the Plans 1, 2, and 3?

Mr. Hunter responded if they do it is in a very indirect fashion. These are people who are paid claims and if the uninsured employer had insurance and had been in the pool with the other employers who had insurance, that would have some very small effect on rates.

CHAIRMAN KEATING asked as much as they are not in one of the plans, then are those claims and the payments made are not part of the actuarials of the other plan.

Mr. Hunter responded that is correct and the more uninsured employers, the larger the affect would be.

CHAIRMAN KEATING asked **Jim Eberly** if he was an independent contractor and had employees.

Mr. Eberly responded he was an independent contractor and had employees for nine months and found it not profitable so he is just an independent now.

CHAIRMAN KEATING asked if he worked alone.

Mr. Eberly said he wears a couple different hats.

CHAIRMAN KEATING asked if when he had employees, did he provide Workers' Compensation.

Mr. Eberly answered, of course.

CHAIRMAN KEATING asked if he was doing subcontracting at the time he had those employees.

Mr. Eberly responded he had.

CHAIRMAN KEATING asked if he had not provided Workers' Compensation for those employees, would the General Contractor have hired him.

Mr. Eberly answered, no he would not have been hired. He had to provide proof of insurance and proof of independent contractor status to do his work.

CHAIRMAN KEATING asked **Kevin Nelson** if he provides Workers' Compensation for himself.

Mr. Nelson answered he does not.

CHAIRMAN KEATING asked **Mr. Nelson** if he seeks exemption from that.

Mr. Nelson answered he does not have to have Workers' Compensation on himself because as a corporation and a corporate officer with more than a 20% interest in the company, he is exempt from Workers' Compensation and also from independent contractor status.

CHAIRMAN KEATING asked if he operated as a live corporation.

Mr. Nelson responded he did.

CHAIRMAN KEATING asked if as an officer of the corporation if he was automatically exempt.

Mr. Nelson responded yes.

CHAIRMAN KEATING asked **Steve Hadnagy** if an individual, like yourself, who has no employees but you are planning to contract with somebody else to do some work and you are looking at potential for an uninsured employer like **Mr. Hafer** who testified, how do you provide Workers' Compensation for yourself or hold the party with whom you are contracting not liable for your injury?

Mr. Hadnagy responded for himself he declared he is exempt from Workers' Compensation and if he got hurt on someone else's job that he was subcontracting for, he is responsible for his own injury. Because the person he is working for is not responsible for his insurance.

CHAIRMAN KEATING said we just heard testimony that there will be a whole bunch of people who are not going to have Workers' Compensation coverage on themselves and will subcontract for someone and when they get hurt, then they will charge somebody out there to cover them through their payroll or through their Workers' Compensation plan.

Mr. Hadnagy said that is the upward migration of liability and with **REP. MOLNAR'S** bill that upward migration, that liability is not there, so that is not a problem.

CHAIRMAN KEATING asked if **Mr. Hadnagy** was an independent contractor, and didn't want to register as a contractor, is that the reason why he is supporting this bill.

Mr. Hadnagy answered he is not an independent contractor and he does not want to register as one.

CHAIRMAN KEATING said you don't want to register as a contractor but you don't mind obtaining a certificate from the Department of Labor which states you are an independent contractor.

Mr. Hadnagy said that is right but that is completely different. That is saying he is accepting the responsibility of being an independent contractor and saying that he does not choose to have

Workers' Compensation Insurance on himself. He said that is not registering with the State.

SEN. THOMAS asked **Laurence Hubbard** if he were a lawyer.

Mr. Hubbard responded that he is.

SEN. THOMAS said this legislation is very important to many people across this state, and he believes it is important to address its foundation, which is built in Section 2 in the definition. **SEN. THOMAS** said he had asked **REP. MOLNAR** if he saw any conflict between the language in Section 2 dealing with an individual representing to the public that the individual is an independent contractor and cannot make claims against his employer. He said **REP. MOLNAR** found no conflict with that and the full legal redress in the State Constitution. **SEN. THOMAS** asked **Mr. Hubbard** if he found any conflict between those two.

Mr. Hubbard responded he does. It doesn't define what a claim is. He stated that any type of claim, whether it be a personal injury claim or a claim for Workers' Compensation or a claim for Uninsured Employment benefits, a claim can be broadly construed and it does run afoul of the Constitution. The Constitution provision, Article 2, Section 16, which **SEN. THOMAS** referred to, only protects the employer who has Workers' Compensation Insurance from the full liability provided by the law in the Constitution. An independent contractor is not an employee by definition, therefore, if you have any person who is reportedly an independent contractor, and you try to prevent them from making claims, you run afoul of the Constitution.

SEN. THOMAS stated with this definition of independent contractor, as it ties into the third significant part of the bill, in Section 4 there is limited liability for an employer who contracts work out. The same definition of independent contractor is brought into that section, so its ability to withstand Constitutional muster would also apply in this other case. He asked **Jacqueline Lenmark** if she finds any conflict between the Constitution, Section 16, the full legal redress and the definition and prohibition against making claims which is found in Section 2 of the law.

Ms. Lenmark asked she does. She doesn't think she can articulate that any better than **Mr. Hubbard** just did.

SEN. DALE MAHLUM asked **Mr. Hubbard** if an independent contractor is working by himself in a new home and he is putting up plaster board and suddenly something happens which causes him to hurt his back and he will be in the hospital for six months, and he is not covered by Workers' Compensation because he is an independent contractor, how does he get into the uninsured pool?

Mr. Hubbard responded the only way he can get to the Uninsured Employer's Fund would be if he claimed to be the employee of someone else who did not provide Workers' Compensation Insurance.

SEN. MAHLUM said so they may have law suit if he said he was working for that person and he knew that employee should have been covered.

Mr. Hubbard said if he understands the question, it is who are you working for? If you are working for a homeowner, then obviously the homeowner's insurance policy would be exposed to a claim for full liability, which has nothing to do with Workers' Compensation Insurance.

If you are working for another contractor, you have two avenues. **Mr. Hubbard** said in his experience he has been litigating independent contractor defense claims, both on behalf of employers and on behalf of claimants who are hurt. You can take one avenue that person is an employee under the definition under the Act, therefore, he is entitled to Workers' Compensation benefits. He goes to the Uninsured Employer's Fund because his employer didn't get insurance. Or he could say he is an independent contractor because the employer has a lot of assets and he will sue him in torte. **Mr. Hubbard** has seen it happen on occasion where the employer says he has insurance through another carrier, we really are your employer and you are not an independent contractor. Because now they want the protection of the Workers' Compensation Act.

CHAIRMAN KEATING said those things **Mr. Hubbard** mentioned happened before this bill has been heard. Those things are happening now under current law. We have not found any way to get away from that court precedent.

Under Section 39-79-1120 states there is a test about employer/employee relations in that you are free of control and direction from the contract and that you are engaged in an independently established trade. So a painter working for a homeowner is in an independently established trade and if he is free from control and direction, then he is an independent contractor. An individual performing those services, if they meet the requirements of subsection 1, is prohibited from filing a claim against that contractor. **CHAIRMAN KEATING** asked **Mr. Hubbard** if these things were true.

Mr. Hubbard said as he reads that section, it is not just someone who represents to the public that they are an independent contractor. If they do represent themselves to the public that they are there is a presumption. But they still must meet the 'A,B' test.

CHAIRMAN KEATING said he understands that, but he does not know if we can write any kind of law which will cover that situation

to make it perfectly safe. Somebody is going nailed someplace, no matter which law is written.

SEN. EMERSON stated it was mentioned that a man was injured working in a home and that he wasn't covered and found out that he could not get covered this way, so he sued the homeowner because the homeowner had liability insurance. He asked **Mr. Hubbard** if that is what he said.

Mr. Hubbard responded that he was answering **SEN. MAHLUM'S** hypothetical question that if someone were working in that situation, one was there is not a prime contractor and the other is just dealing with the homeowner.

SEN. EMERSON asked if it were true that he could not sue that homeowner unless the homeowner is negligent in some way. If everything is perfectly right, and the employee just drops his hammer, steps on it and falls, that is his problem. The homeowner's liability insurance is not put at risk for that, is it?

Mr. Hubbard responded it is his understanding that it is still the law of the land in Montana that the contractor would have to prove negligence on the part of the homeowner.

Closing by Sponsor:

REP. MOLNAR stated you have to prove the lack of negligence as **Mr. Hubbard** just spoke. **REP. MOLNAR** said he cannot stop the law suit. Perhaps there is a weakness on line 15, for indeed the courts are open to all persons but that does not mean they are going to win. He said language may mean they cannot collect on a claim, but under the current law it says that we will begin under the assumption the person is an employee. We have to assume guilt on the part of the employer.

REP. MOLNAR said under his law that employee will have to state he is an independent contractor, he signed the contract as an independent contractor. He got paid a certain amount of money and then three weeks later his back hurt and he wants on the Workers' Compensation policy.

REP. MOLNAR said he may not be able to preclude them from the courts, but the employee is precluded from the courts under SB 45 and SB 364. He said that not **Mr. Judge** nor anyone else rose against that, but rather in favor of it.

He said in the fiscal note he has amended out the request that the Department return the $1.12 Million they took under a law that they were barred from enforcing.

REP. MOLNAR said that **Mr. Judge** said this would be a lawyer's paradise. Since 1994 there has been nine cases, under existing law you have a higher probability of this happening because you

have the possibility of assumption of employee status, instead of the assumption that both these people entered into a legal contract.

Also, he said there is a huge fear in our existing system that a person will be sued by somebody. This bill will not stop the law suits but will give more wins on the 'good guy' side, those who are not trying to dupe the system.

He said the Department holds you and me responsible for the errors and omissions of others because we are easy and the law gives us a presumption of guilt.

REP. MOLNAR then stated that **Mr. Hunter** mentioned the unlevel playing field and they only way that happens is to hold people down and keep them from rising above others. To stifle their initiative to artificially created liabilities.

He said that **Mr. Chance** and **Mr. Schweitzer** stated that their members do not care if their Constitutional Rights are trashed. **REP. MOLNAR** said he doubts that is what their clients want. They want an end to the upward migration of liability, not a compliance officer to enter their home or shut down their job site.

REP. MOLNAR said **Mr. Chance** also spoke of confusion under the current system. **REP. MOLNAR** stated that 13 pages of rules on two words is confusion. Most of those pages end with "do not rely upon these words for we shall interpret them for you".

He said if you take **George Wood's** conclusion that if a person is self-insured, Plan 3, that whoever that person hires must be Plan 3 because that is his plan of compensation. Instead of the plan of compensation we could simply say the policy of the employer. The employer can simply be interpreted as the person.

REP. MOLNAR referred to the highlighted words in **EXHIBIT 2.**

He said currently Workers' Compensation rates are based on exposure. If they are not exposed to other contractors and employees, he believes the rates will come down. They have come down by good management, instituted by **Mr. Hill.** He stated **Mr. Hill** told him that by the current Act rates will hit the Uninsured Employer's Fund $5 to $10 Million.

REP. MOLNAR stated that those who came forward as opponents have not given a solution because they benefit from it. He said **Mr. Hunter's** Division says right on the door, "Third Party Liability". It is his job to migrate it upward and it is the job of the State Workers' Compensation to migrate it upward, not to protect the people, but to protect their funding source.

He asked for a do-pass on this bill.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 3-13-97
BILL NO. HB 252

Amendments to House Bill No. 252
Third Reading Copy

Requested by Representative Molnar
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 10, 1997

1. Page 5, line 14.
Following: "~~met~~"
Insert: "if the requirements of subsection (1) are met"

Injuncted	In SB 45
39-9-101	39-9-101
39-9-102	102
39-9-103	
39-9-201	201
39-9-202	202
39-9-203	
39-9-204	204
39-9-205	
39-9-206	206
39-9-207	
39-9-208	
39-9-211	211
39-9-301	301
39-9-302	
39-9-303	303
39-9-304	
39-9-401	401
39-9-402	402
39-9-403	403
39-9-404	404
39-9-405	405
39-9-406	406
39-9-407	407
39-9-408	408
39-9-409	409
39-9-410	410

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 3-13-97
BILL NO. HB 252

Not Injuncted

39-71-120

39-71-401

FIFTH JUDICIAL DISTRICT COURT
BEAVERHEAD COUNTY
FILED
AUG 14 1996
SHEILA BRUNKHORST, CLERK
BY Sheila Brunkhorst

MONTANA FIFTH JUDICIAL DISTRICT COURT, BEAVERHEAD COUNTY

* * * * * * * * * * * * * *

INTERMOUNTAIN SYSTEMS, INC., a Montana Corporation, Plaintiff,	*	Cause No. DV-96-11840
v.	*	FINDINGS, CONCLUSIONS AND ORDER (Preliminary Temporary Injunction)
C & C FARM AND RANCH SUPPLY, a Montana Corporation, Defendant,	*	
and	*	
STATE OF MONTANA, Defendant-Intervenor.	*	

* * * * * * *

This matter came before the Court on Plaintiff's Application for Preliminary Injunction and reciprocal cross motions for summary judgment. The Court now having considered the entire record, and written and oral argument of counsel, does now make the following:

FINDINGS OF FACT

1. On or about June 28, 1996, the Plaintiff Intermountain filed its Motion for a Temporary Restraining Order and Order to Show Cause, or in the alternative, Application for Preliminary Temporary Injunction. Plaintiff is a Montana contractor and seeks the injunctive relief from the State's enforcemen: of the so-called Contractor Registration Act.

2. On June 28, 1996, the Court issued the requested Temporary Restraining Order. The order restrained the State from enforcing the provisions of Chapter 500, Montana Session Laws of 1995, except for processing applications for registration numbers or performing clerical functions relating thereto.

3. The State was notified of the Application for the Temporary Restraining Order and appeared through counsel. The Court issued an Order to Show Cause directing the parties to appear on July 16, 1996 to address the issue of a Preliminary Temporary Injunction. The parties appeared, and filed cross motions for summary judgment. Evidence was adduced and the matter orally argued and subsequently briefed.

4. After the July 16 hearing the Court ordered the Temporary Restraining Order continued, pending consideration of the voluminous briefs. Subsequently on August 1st the Court extended the Temporary Restraining Order until August 15 by agreement of the parties.

5. The Court now finds that absent the requested Preliminary Temporary Injunction, the State's contemplated enforcement of the Act will result in great and irreparable injury to the Plaintiff and others similarly situated. Plaintiff and contractors similarly situated face the prospects of fines, penalties, even incarceration.

6. The Court finds that while the simple act of registering could prevent the enforcement of the sanction provisions of the Act, there is from the evidence a genuine and good faith concern regarding constitutional violations of privacy, and a reasonable expectation thereof, created by information sought on the State's proposed registration form. There was a total absence of evidence showing any compelling State interest in overcoming these claimed privacy rights.

7. The Court further finds that even the State is concerned about immediate ramifications from enforcement of this Act. The evidence discloses that it contemplates a period ("a

few months") of orientation and education of contractors before implementing enforcement[1]. If the State is that concerned, so is the Court. The possibility of violation of rights of due process, including double jeopardy and excessive sanctions are real.

8. The Court finds that the issuance of a Preliminary Temporary Injunction, *pendente lite*, would preserve the *status quo*, and be consistent with the State's own concerns as set forth herein.

From these findings the Court now issues its:

CONCLUSIONS OF LAW AND ORDER

GRANTING PRELIMINARY TEMPORARY INJUNCTION

I

To the extent that the foregoing Findings of Fact make certain Conclusions of Law or the application of law to fact, the same are incorporated herein as Conclusions of Law.

II

The reciprocal motions for summary judgment are DENIED.

III

This is a proper case for the issuance of a Preliminary Temporary Injunction, *pendente lite*, and without bond.

IV

The State of Montana and its agents are hereby temporarily enjoined and restrained during the pendency of this action from enforcing the provisions of Chapter 500, Montana Session Laws, as codified in §39-9-101, *et seq*, MCA. The *status quo* shall be maintained pending a final hearing on the merits.

\\ //

\\ //

[1]See Department of Labor newsletter, Plaintiff's Exhibit A to its brief.

V

This order shall not prohibit the State from routine administrative duties related to processing applications, and its orientation and education programs.

DATED this 14th day of August, 1996.

District Judge

CLERK OF COURT'S CERTIFICATE OF SERVICE
THIS IS TO CERTIFY that the within document was duly served on all parties indicated below, by U.S. Mail or personal delivery, this 14th day of August, 1996

Clerk

Hoffman & Suenram
Kozakiewicz Law Office
Attorney General's Office

Section 3. Oath of office. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office

To: MT. Senate Employment and Labor Relations Committee
Date: March 13, 1997

FOUR REASONS TO PASS HB252

SENATE EMPLOYMENT
EXHIBIT NO. 3
DATE 3-13-97
BILL NO. HB252

1. Truly limits upward migration of liability.

a. Independent contractor is responsible for his own injuries or violations of laws. (This is opposite of SB45 which mandates hiring unit is responsible unless he meets certain conditions).
b. Changes old laws that mandated upward migration of liability (SB45 leaves laws in tact).
c. Hiring unit **is not** made to be policeman for MDL&I. (contrary to SB45)
d. Effectively deals with "hiring agent/contractor relationship" for all businesses (not just construction industry as does SB45).

2. No new bureaucracy created.

a. Work comp and labor laws are not changed.
b. Will not have the following as result contractor reg. law:
   1. MDL&I given authority to make, enforce, and judge rules and keep all fines.
   2. MDL&I spent all $1.13 million while under court injunction.
   3. Many complaints about registration process and sundry rules.

3. Costs

a. No new costs to administer.
b. Will not have the following because repeal contractor reg. law:
   1. At $80 annual fee, MDL&I spent all $1.13 million but did not enforce one law.
   2. MDL&I coming back and asking for more money (as case where they tried to amend $25 fee to $70 for SB45 at House hearing.)

4. Court challenge

a. New clean bill.
b. Will not have the following because contract reg. law repealed:
   1. Extended period time with no law dealing with this issue
   2. Court costs.
   3. Potential tangled mass of legislation due to court rulings.

compiled by Russ Penkal for: Independent Contractors of Montana
P.O. Box 3742, Bozeman, MT 59772 (406) 586-6599) Email: icmt@imt.net

Criticisms and Answers Concerning HB252

HB252 only addresses administrative liability created over the years in Montana law. It does not address tort liability.

True. HB252 effectively limits upward migration of administrative liability, whereas SB45 mandates upward migration if hiring units do not do their "police work" well. Neither bill addresses tort.

Under HB252 all anyone has to do to become an independent contractor is to say they are one.

It is true that if you enter into a contract as an independent contractor, that status cannot be changed for proposes of claiming work comp after an accident. HB252 does not prevent the state from enforcing any work comp or labor laws that might have been violated.

General contractors will force employees to become "independents" under HB252.

Not anymore than what may occur now. The AB test is included in HB252 to determine employee or independent status. This same scenario can also occur under SB45. The "employee" just has to pay a fee to get his independent status "validated" by the state.

We need legislation more restrictive than HB252 to prevent a person going up the ladder an independent contractor and becoming an employee after he hits the ground.

False. Only 9 independent contractors claimed to be employees after an injury in the last 3 years (over half were forced by MDLI). More common is the scenario when a general contractor back dates the injured worker on his payroll so the new "employee" can collect work comp. The general contractor does this for fear of upward migration of liability even though his work comp rates will go up and it is illegal. HB252 removes the motivation to do this because there is no upward migration. (Note: work comp insurers should implement policies preventing back dating.)

If neither HB252 nor SB45 passes, we are under SB354.

False. The injunction still applies and the court process may take 2 years to unravel. This is a big reason to defeat SB45, which only amends SB354, and pass HB252, which repeals SB354.

One advantage of SB45 is that it reduces the amount of paper tracking a general contractor must do.

False. Contractor registration only replaces one piece of paper for another (registration certificate for work comp policy). In this case, the state is increasing its liability by guaranteeing the certified person has work comp or an exemption. (Does the state really want more liability?) The contractor still must track liability insurance, performance bonds, contract for service or other items he requires. Since the state can revoke registration (including for things such as non payment of child support), ~~the hiring unit must call an 800 number to validate every sub for every job.~~ If this process is streamlined, the state increases its liability. (———— *streamlined with recent Senate floor amendment #2 to SB45.*)

compiled by Russ Penkal for: Independent Contractors of Montana
P.O. Box 3742, Bozeman, MT 59772 (406) 586-6599) Email: icmt@imt.net

DEPARTMENT OF LABOR AND INDUSTRY

EMPLOYMENT RELATIONS DIVISION

MARC RACICOT, GOVERNOR

P.O.BOX 8011

STATE OF MONTANA

TELEPHONE: (406) 444-6530
FAX: (406) 444-4140
TDD: (406) 444-5549

HELENA, MONTANA 59604-8011

Certificate of Independent Contractor Exemption

This is to certify that

SENATE [illegible] EMENT
EXHIBIT NO. 4
DATE 3-13-97
BILL NO. HB 252

has sworn to the Department of Labor and Industry he/she is:

- engaged in an independently established trade, occupation, profession or business, and
- is free from control or direction by the hiring agent over the performance of his/her services.

for the occupation(s) of

Effective Dates: February 08, 1994 **to** February 08, 1998

THIS EXEMPTION ONLY APPLIES TO THE ABOVE NAMED INDIVIDUAL AND DOES NOT INCLUDE ANY EMPLOYEES HE/SHE MAY HIRE OR ANY OTHER SUBCONTRACTORS HIRED BY THE ABOVE NAMED INDIVIDUAL

This certificate does not relieve the hiring agent of its responsibility for establishing that a person is an independent contractor.

The law defines an independent contractor as one who renders services in the course of an occupation and:

1. has been and will continue to be free from control or direction over the performance of the services, both under the contract and in fact;
2. is engaged in an independently established trade, occupation, profession, or business; and
3. has received an exemption granted by the Department of Labor and Industry.

This certificate fulfills the third test. If an individual does not pass all three tests, the employer must ensure workers' compensation coverage exists prior to hiring. If a hiring agent questions a worker's status, they may contact the Department of Labor and Industry at (406) 444-7734.

NOTICE: Montana law prohibits an employee from waiving his/her rights under the Workers' Compensation and Unemployment Insurance Acts. An employer who purposely avoids his/her responsibility to provide worker's compensation insurance and unemployment insurance for employees may be committing employer misconduct, a felony, punishable by up to 10 years in prison and/or $50,000 fine.

This optional signature block is provided for Independent Contractors who wish to provide a copy of this certificate to hiring agents. This certificate should be photocopied prior to completion of this signature block.

Brief description of work, task, job, contract		
Independent Contractor Signature	Social Security Number	Date
Hiring Agent Signature	Date	

IC Exemption Cert. 3/96

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 3-13-97
BILL NO. HB 252

Thursday March 13, 1997

Senate Labor Committee: **Hearing -3 PM Thursday March 13, 1997**

Subject: HB 252 (Repeal SB 354 the mandatory contractor registration law)

To the chair of the Labor Committee; Tom Keating and Jim Burnett, Sue Bartlett, Steve Benedict, Casey Emerson, Dale Mahlum, Debbie Shea, Fred Thomas, and Bill Wilson.

The law has resulted in a severe financial and paperwork hardship on small contractors while expanding government regulation. The law was to protect us but when implemented it is resulting in a tremendous burden to the innocent.

All of us are interested in keeping costs down. Even if someone rents an apartment or house, they will end up paying more for the rent. The reason--when repairing or building new buildings, the person doing the work must add the cost of fees, regulations, and another layer of bureaucracy. It is like another tax!!!!

Please vote to approve HB 252 and give us back some freedom and stop some of the government growth!

Sincerely,

Walt Dupea

Walt Dupea
8585 Highway
Bigfork, Montana 59911 Phone 406-837-5751

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE 3-13-97
BILL NO. HB252

My husband and I have owned and operated a legal painting contracting business for fourteen years. We have no need for Contractor Registration because my husband and I have always required the necessary paperwork that proves the legality of our subcontractors and employees. Ultimately, my husband and I are the only ones that can assure our protection from "upward migration of liability" by taking personal responsibility in confirming a subcontractor's legal status. It is illogical to shrug this responsibility onto a bureaucratic agency that is disabled by an imcompetent bill (SB354) that cannot adequately protect us from liability.

Also, HB252 restores our basic Constitutional rights where SB354 grossly disregards Montana's Constituion. This deserves serious and thoughtful attention. I could never support a bill like SB354 that recklessly imposes unconstitutional penalties for infractions on Montana citizens. HB252 repeals the unconstitutional enforcement for penalties of infractions from: **Imposition of Double Jeopardy** (Article II, Section 25) and **Excessive Sanctions** (Article II, Section 22) restores our **Right to Due Process** (Article II, Section 17) and **Equal Protection** (Article II, Section 4) and reestablishes our protected right to **Search and Seizures** (Article II, Section 11) and **Self Incrimination** (Article II, Section 25).

HB252 reinstates the Concept of Contractor Registraction with regard and loyalty to the constitution and returns the responsibility of protecting oneself from the "upward migration of liability." Without HB252 the Dept. of Labor will be so swamped with constitutional and liability lawsuits that they won't have the funds to enforce Contractor Registration. HB252 will redeem the construction contractor from the defective SB354 which would only strangle Free Enterprise, place superflous burdens on the Construction Contractor and create a horrific beaurcratic mess in which we'll be here for legistlative eternity trying to clean it up.

Avoid such a catastrope by supporting HB252.

Jenny Dodge
P.O. Box 965
Helena, MT 59624
(406) 449-5606

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7
DATE 3-13-97
BILL NO. HB 252

Charles J. Lorentzen
418 4th St. East
Kalispell, MT 59901

The Honorable Senator Tom Keating
Capitol Station
Helena, MT 59620

Re: HB 252

March 13, 1997

Chairman Keating and Members of the Labor and Employment Committee,

The Buisness and Labor plank of the Republican Platform says on page 10, heading Government: "The Montana Republican Party believes that the role of government in economic development is to fully cooperate with the private sector in retaining and expanding existing businesses, and in the establishment of new business and industry by eliminating unnecessary regulation and control within our state." A very good place to begin "eliminating unnecessary regulation" is to vote to repeal the contractor registration law; vote for HB 252.

Larger contractors complained that they were paying too big a share of worker's compensation so they pushed for the law in 1995. They felt wounded so in effect they tried to equalize things by inflicting a similiar wound on the small contractors, and their law is doing a lot of wounding. I suggest a much better solution is to fix the wound of the larger contractors. Why should we tollerate a situation were the whole State of Montana is litered with wounded contractors, restricted from hiring, unnecessarily regulated, stopped from progress and growth.

The first step is to repeal this misguided law by voting for HB 252. I strongly urge you to do so. It would help to satisfy another part of the government plank shown above: "expanding existing businesses". Thank you for your consideration.

Sincerely,

Charles J. Lorentzen

Charles J. Lorentzen

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9
DATE 3-13-97
BILL NO. HB252

HB 252

Dear Mr. Chairman and members of the committee. For the record my name is Dean Randash and I represent NAPA Auto Parts.

I rise in support of HB 252 because of the tremendous burden and liability that the 1995 contractor bill placed on small businesses. To hold small business responsible and financially liable for the failure of sole proprietor contractors to complete forms and comply with policy procedures demanded of them by this law is equivalent to forcing an individual to pay for crimes perpetrated by brothers or sisters.

Our forefathers did not intent nor did they propose that private sector, free enterprise commerce, be the police and enforcement arm of government. If a law is so tyrannical and onerous that compliance is impossible to attain without mandating the private sector to police it and then to severely penalize them if they don't. Just maybe that law needs to be repealed. By going back to the starting point effected parties can rethink and revaluate the problem bring forth a new and better solution.

Please pass HB 252.....

Dean M. Randash - NAPA Auto Parts - Helena, Montana

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10
DATE 3-13-97
BILL NO. HB 252

Distinguished Senators

I Jim Eberly, trade 12 contractor 6.

II MDLI spent 1.13 million and is still Soliciting 80% Reg fees. Knowing that 85% of the funds were for enforcement which was barred by the court by the State. already Talked about

II Recently I reinstated my work Comp policy. a contractors name came up as being reported as having illegal employees. Turns out it was still in question at the time and was his minor daughter, perfectly legit and did not need reported.

I thought people were innocent until proven guilty. Many not if you are a contractor

If I hadn't known this contractor I could have cut my business this but luckily he was a friend.

II The Cnt. Reg is too complicated. Lets Simplify The Law for all in HB 252. which Homebuilders & Ind. Cont of MT → (1. limit upward migration of liability. 2. Simple definition of who an ind. is

P.S. a Survey of the S.W. Montana Homebuilders showed of 300 members only 100 were contractors. Is this a state wide % Do They Really represent the Const. Ind.?

Jim Eberly
Custom Paint & Paper
724 N. 22nd #4
Bozeman, MT. 59718
(406) 587-2407

DEPARTMENT OF LABOR AND INDUSTRY

EMPLOYMENT RELATIONS DIVISION

MARC RACICOT, GOVERNOR

P.O.BOX 8011

STATE OF MONTANA

TELEPHONE: (406) 444-6530
FAX: (406) 444-4140
TDD: (406) 444-5549

HELENA, MONTANA 59604-8011

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 11
DATE 3-13-97
BILL NO. HB 252

March 1997

Dear Contractor,

Your Contractor Registration will expire soon. If your certificate was issued for less than a full year, you may wish to extend to the full year as explained in the letter which accompanied your certificate. If you choose to complete the renewal application, please provide the most current information available including your registration number.

As you may be aware, the State is currently prevented from enforcing the construction contractor registration laws because of a temporary preliminary injunction issued by District Court Judge Frank Davis of Dillon, Montana. Under the provisions of the injunction the State is able to perform routine administrative duties related to processing applications, and conducting its orientation and education programs.

Because of the preliminary injunction, the Department of Labor and Industry cannot currently require that you renew your construction contractor registration. However, registration as a construction contractor is still available for those construction contractors that wish to remain registered, or have a contractual obligation to remain registered.

You should be aware that the construction contractor registration laws have not, as of the date this letter is being sent to you, been repealed or declared unconstitutional by any Montana court.

Please note that all construction contractors, whether registered or not, must comply with state laws regarding workers' compensation and unemployment insurance. Individuals who represent to the public that they are an independent contractor must obtain an independent contractor exemption from the Department in order for that status to be recognized for workers' compensation purposes, regardless of whether or not the individual is registered as a construction contractor.

A revised CONTRACTOR REGISTRATION APPLICATION and RENEWAL FORM is enclosed. Forms for the SURETY BOND, LETTER of CREDIT and CERTIFICATE of DEPOSIT options can be requested by calling **1-800-556-6694**. A CASH deposit is the fourth option available to fulfill the security deposit requirement. Those contractors having a surety bond on deposit with the department may secure a continuation certificate from their agent to extend coverage for the renewal period. Please consult your financial institution for continuation of other security forms.

Assistance with the renewal process may be obtained by calling our in state toll free number **1-800-556-6694** or by calling (406) 444-7734.

Contractor Registration Unit
Employment Relations Division

Feb. 14, 1997

Presented to Montana's 55th Legislative Assembly,
by: Alex Martin, owner - Martin Construction
940 Kodiak Place
Belgrade, Mt. 59714
(406) 388-1261

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 12
DATE 3-13-97
BILL NO. HB 252

As a small business owner and building contractor I find that Senate Bill 354 and its amended version, Senate Bill 45 have been a liability not an asset to the construction industry here in Montana.

In addition to the increase in fees and extra paperwork, there is a very large intimidation factor in these Bills and the compliance requirements they contain. To illustrate my point, let me share a personal experience from July of 1996.

On July 1, 1996, SB 354 became law in reality and about 1 week later I recieved in the mail, a letter from one of my suppliers here in Bozeman, stating that the Mt. Dept. of Labor & Ind. had implemented a mandatory Contractor Registration and that if in fact I wished to continue doing business with them, the supplier, I would have to provide them with proof of my registration. The letter also stated that I could pick up the necessary registration forms at their office if I needed to. Now I had been doing business with this supplier for quite some time

previous to the passage of this legislation and no-one had ever questioned my integrity or "twisted my arm" before taking my money prior to this.

I was not intimidated by this action but it still troubles me to think that some people are, and who knows? Maybe my supplier was intimidated by this law and felt they needed to share the burden with their customers - at any rate, a trust and a business relationship was changed that day.

The other problems with SB-354 and SB-45 are numerous and varied and virtually impossible to comply with - most working Montanans and homeowners that I talk to can't even comprehend this law - its written in such a way that only lawyers can understand it. What is Montana trying to hide from its citizens? Please don't vote for or sign your names to <u>any</u> legislation you don't understand.

I urge you to support House Bill #252 - its not hard to understand, its about common sense.

Sincerely,
Alex J. Martin
rep. Martin Const.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 13
DATE 3-13-97
BILL NO. HB 252

HB 252
Testimony of the State Compensation Insurance Fund

The State Fund rises in opposition to HB 252 regarding amendments to the Workers' Compensation Act's definition of independent contractor. The State Fund takes no position on the repeal of the contractor registration provisions of Title 39, Chapter 9.

Several bills have been presented this legislative session designed to correct the real or perceived problems caused by passage of SB 354 in the 1995 Session. Specifically, SB 354 amended the workers' compensation definition of "independent contractor" contained in 39-71-120, MCA, to include the requirement that an independent contractor possess an exemption certificate issued by the Department of Labor and Industry. Prior to the exemption requirement, Montana law only required an independent contractor to meet a two-part test to establish his/her status as an independent contractor. The test, commonly called the "AB" test, required the independent contractor to be (1) free from control or direction over the performance of the services, both under the contract and in fact; and (2) in an independently established business, trade, occupation or profession. The first part of the test has existed in Montana law since 1915. In 1973, the second part of the test was added. Finally, in 1987, subsection (2) which creates a presumption of employee status was enacted.

In our view, prior to the exemption - or (c) - requirement our laws contained a common-sense and functional independent contractor definition. The law starts with a presumption of

employee status and could be rebutted by successful demonstration that the worker met the "AB" test. The Court's developed a number of factors to be considered in evaluating whether an individual met the "AB" test, and we found employers, workers' and insurer's were able to understand and function under this test.

HB 252 turns the definition on its head. The Bill leaves the "AB" test intact, but also sets up internal inconsistencies and contradictions. For example, the proposed amendment of 39-71-120, MCA, rewrites subsection (2) to provide that a person who represents to the public that he/she is an independent contractor is considered, presumed, to be an independent contractor. Yet, subsection (1) still sets forth the "AB" test as the requirement for independent contractor status. Which part of the law controls? In addition, the Bill fails to define what "represents to the public" means for purposes of establishing the independent contractor presumption. The Bill precludes the Department of Labor and Industry from adopting rules that could clarify or define the meaning.

In addition, the Bill precludes the Department of Labor and Industry Uninsured Employers Fund from taking action against an uninsured employer if the employer "relied" on a representation of independent contractor status. Again, is that reliance subject to the "AB" test? The Bill doesn't say. Such vague language invites lawsuits and gives employers a false sense of security.

Even more troublesome is the amendment of 39-71-401 (3)(c), MCA. Here, the Bill leaves the exemption process in place; but then creates a conclusive presumption of independent contractor status "when the contracting parties agree to an independent contractor status." This contradicts the "AB" test AND the requirement that the individual hold themselves out to the public as an independent contractor.

In summary, we believe HB 252 as it relates to the definition of independent contractor is

inconsistent and contradictory. It will leave employers with a false sense of security and create litigation for insurance carriers trying to apply the law. Historically, we have had a workable independent contractor definition and test. This Bill ultimately throws the baby out with the bath water. For the above reasons, the State Fund cannot support this Bill.

. . . passed out to the legislature in 1989 EMPLOYMENT
EXHIBIT NO. 14
DATE 3-13-97
BILL NO. HB 252

"CAN MONTANA AFFORD THE COST"

In Sept. of 1989 I entered into a written contract with J.R. Richards of #5 Latigo Lane, Butte, MT to build a barn for me. In the course of his work J.R. Richards reached up with his air hammer and touched an overhead electric wire causing it to flash & burn him on the arm. J.R. Richards retained Mickey McKeon of Anaconda, MT and sued me as an employee. I filled out the report I received from the Workers Compensation and furnished the Workers Compensation with the written contract, a list of people J.R. Richards had worked for as an independent contractor and witnesses that he had solicited work from as an independent contractor. The Workers Compensation gave J.R. Richards over thirty-four thousand dollars. During the time J.R. Richards was pursuing this suit he was actively building a building for his father in law and remodeled his house. He was actually not working for about two months or less.

J.R. Richards then admitted that he was an independent contractor and collected one-hundred and twenty thousand dollars from my insurance company and myself, the insurance company paid one-hundred thousand and I paid twenty-thousand. After collecting this money J.R. Richards and his attorney Mickey McKeon refused to give back to the Workers Compensation the thirty-four thousand they had received while they maintained that J.R. Richards was an employee.

I believe that there should be better investigation by the Workers Compensation Division before they give away the money of the people of Montana, there should also be legislation passed that when an individual represents himself as an independent contractor he waives the right to sue as an employee. There should also be a provision in the regulations that an attorney must conduct his business with a degree of ethical conduct or be subject to review.

This information is provided by Carl Hafer with the desire that it would prompt legislation to prevent the abuse of the Workers Compensation system by unscrupulous people.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 15
DATE 3-13-97
BILL NO HB 252

HOME BUILDERS ASSOCIATION OF BILLINGS

March 5, 1997

Senator Tom Keating, Chairman
Senate Labor and Employee Relations Committee
Montana State Legislature
Capitol Station
Helena, MT 59620

Dear Senator Keating:

I am writing you on behalf of the 275 member firms of the Home Builders Association of Billings. Our association firms employ approximately 8,000 Billings residents in the construction trades. We want to express to you our strong opposition to HB252. This bill will not only eliminate the Contractor Registration legislation, which we strongly support, but it would also repeal years of carefully crafted legislation which has created a viable program for employees, employers, and the State of Montana. Please, Senator Keating, oppose HB252.

Sincerely,

Gay A. Rye

Gay A. Rye
Executive Officer

P.O. Box 875 ■ Billings, MT 59103 ■ 406-252-7533

April 18, 1994

Governor Marc Racicot
State Capital Building
Helena, MT 59601

Dear Governor Racicot:

I am sending you this letter to convey my feeling to you that my State (Montana) has failed to perform its duty to ensure that its citizens are not taken advantage of by professional people employed by the state and other people who take advantage.

In September of 1989, I entered into a written contract with J.R. Richards to build a barn for me. During the course of working, J.R. Richards was injured and sued me as an employee. From the onset, I maintained that J.R. Richards was an independent contractor. I furnished the written contract and the required accident form to the Uninsured Employers Fund. In addition, I furnished a list of people J.R. Richards had performed independent contract work for. I went to Helena and met with Karen Doig who was at that time a supervisor with the Uninsured Employers Fund. Based on this information, the Uninsured Employers Fund determined that J.R. Richards was an independent contractor and not able to claim benefits as an employee. At that point, J.R. Richards had shopped around for an attorney and had not found one, then he retained Mr. Wade Dahood of Anaconda, who after a short period of time, informed J.R. Richards that he could not represent him as J.R. Richards had worked for his wife, Nancy Dahood, as an independent contractor at the M&M Bar in Butte.

At that point, J.R. Richards retained Micheal McKeon of Anaconda. Then Micheal McKeon and J.R. Richards submitted to the Uninsured Employers Fund (Karen Doig) a report which fulfilled every requirement of being an employee instead of being an independent contractor. At this time, despite my objections, Karen Doig revised her earlier determination of independent contractor status and said that J.R. Richards was an employee. When I later asked Karen Doig why she had accepted this erroneous accident report by Micheal McKeon and J.R. Richards without doing any checking on all of the information I had submitted and all of

the people I had listed who J.R. Richards had worked for as an independent contractor and who had stated that they would testify that he was and had been an independent contractor. Karen Doig's statement to me was that there was not sufficient staff to check on my submitted information. Then Micheal McKeon had a court order tying up my assets. During the course of the legal matter which had now progressed, J.R. Richards received $34,000 from the Uninsured Employers Fund and $20,000 from me. At that point in the legalities, Micheal McKeon and J.R. Richards admitted that he was an independent contractor and got $100,000 from my insurance company. By their admitting that he was an independent contractor J.R. Richards and Micheal McKeon admitted that the report they had filed to qualify J.R. Richards as an employee was a fabrication. When I sent the copy of this admission by J.R. Richards to Karen Doig, she said to me in her office that Micheal McKeon had taken advantage of the system by lying about J.R. Richards' status. Karen Doig then stated that Micheal McKeon and J.R. Richards would have to pay back to the Uninsured Employers Fund the total of $34,000 that they had received by lying.

As time went on and I spoke with Karen Doig's successor, who I cannot recall by name, who said to me what did I care as it did not come out of my pocket. In 1993, I began to speak to Laurie Ekanger the chief supervisor of the Uninsured Employers Fund who asked me why I was pursuing this? Did I want revenge? I said to her that I did not want revenge, but I felt that J.R. Richards and Micheal McKeon should repay the $34,000 to the State of Montana because they abused the system to get it. At about this time, Laurie Ekanger requested that I not call her anymore. At that time, I began to call a Kevin Braun, an attorney for the Insured Employers Fund.

At the onset, Kevin Braun stated that it was too bad that the statute of limitations had passed because J.R. Richards and Micheal McKeon had defrauded the state of Montana. When I continued to insist that the money be repaid to the state, Kevin Braun stated to me that he was sick of arguing with Micheal McKeon and was going to sue J.R. Richards and myself in the Workers Compensation Court. Micheal McKeon finally agreed to pay back $19,000 to the Uninsured Employers Fund.

This is not a complete word by word account of all that transpired from September of 1989 to March of 1994, but I hope it shows that there is a problem with the Workers Compensation system that everyone is reluctant to address, that is the slick tactics of some attorneys who take advantage of the system. Everyone, including myself, are acquainted

with attorneys for whom we have a high degree of respect which they deserve. When an attorney utilizes slick maneuvers to use the system it degrades the entire profession. As for individuals like J.R. Richards, we all see them every day as they try the various ways to use the system. It is only when they are able to enlist the talent's of a slick attorney are they able to use the system. If the state of Montana really wants to bring credibility to its Workers Compensation Program, it must ask the employees of that system to perform their work in a manner commensurate with their obligations to the citizens of Montana. To ensure that they are not paying their money to people who do not deserve it.

The state of Montana must be willing to say that individuals and slick attorneys who misuse the system will not be tolerated.

Sincerely,

Mr. Carl Hafer

jri

OFFICE OF THE GOVERNOR

STATE OF MONTANA

MARC RACICOT
GOVERNOR

STATE CAPITOL
HELENA, MONTANA 59620-0801

May 3, 1994

Mr. Carl Hafer
6050 Porter Avenue
Butte, Montana 59701

Dear Carl:

I have received and carefully reviewed your recent letter explaining your situation with an uninsured contractor that you hired in 1989. It appears that you were certainly caught in an extremely difficult and frustrating situation.

I have visited with Betti Hill who met with you on my behalf. Betti has explained to me that the State has settled out of court with the claimant to recover $19,000 of the disbursed benefits.

As you mention, it is a shame when someone abuses the system. The laws in regard to independent contractors can be confusing and allow for abuse. Many people want to work as independent contractors until they are injured, then they want to have the benefits of an employee. As a result, some people have been caught in the "catch 22" created by this scenario. Both the state legislature as well as the Internal Revenue Service continue to work to tighten the laws governing this work classification.

As you know, I did not serve you in this capacity during the majority of the years when your situation took place. Since most of the involved state employees are either gone or now are holding different positions, it is impossible for me to address why the details were handled in the manner they were.

Nonetheless, I sympathize with the terrible dilemma that you confronted in dealing with this over the past five years. I hope now that it is settled, that you can get on to more productive possibilities. I extend my best wishes and warm regards.

Sincerely,

Marc Racicot
GOVERNOR

TELEPHONE: (406) 444-3111 FAX: (406) 444-5529

this information was prepared by the Uninsured Employers Fund during the last legislature at the request of Mr Van Valkenburg

Richards/Hafer Case Synopsis Feb 6, 1995

1. J.R. Richards was retained by Carl Hafer to construct a barn on Mr. Hafer's property.

2. On September 25, 1989, Mr. Richards came into contact with a high voltage powerline which ran over the construction site.

3. Mr. Richards filed a claim for compensation with the UEF alleging himself to be an employee of Mr. Hafer. Mr. Hafer did not have workers' compensation insurance coverage as he believed that he hired Mr. Richards as an independent contractor.

4. The UEF initially denied Mr. Richards claim, finding that he was an independent contractor. That denial was reconsidered after Mr. Richards submitted additional information which the UEF found to be determinative of employee status. The claim was picked up and $34,473.14 was paid out by the UEF.

5. Subsequent to the UEF picking up the claim, Mr. Richards sued Mr. Hafer in district court. That case settled for the limits of Mr. Hafer's homeowner's insurance policy ($100,000) plus a $20,000 contribution from Mr. Hafer.

6. During the course of settlement of that claim, Mr. Richards responded to a set of admissions. The relevant request for admission and response is as follows:

> REQUEST FOR ADMISSION NO. 3: Admit that you worked as an independent contractor building the barn for Defendant at the time you were injured.
>
> RESPONSE:
>
> Admit that I was both an independent contractor and statutory employee of Carl Hafers when I built his barn. See, Cain v. Stevenson, ____Mont.____, 706 P.2d 128.

7. That admission came after the UEF's determination of employee status.

8. After Richards' admission, the UEF sought to recover the amounts paid on the claim from Richards. Richards was not cooperative and the UEF was forced to file a petition for mediation. That petition was dismissed so a petition for trial was filed in the Workers' Compensation Court. The UEF filed its petition in the alternative, i.e., that Richards was either an employee or an independent contractor, not both. If an employee, the UEF wanted reimbursement from Hafer. If an independent contractor, the UEF wanted reimbursement from Richards. The UEF settled with Richards for reimbursement in

the sum of $9,236.57

SOUTHWEST MONTANA BUILDING INDUSTRY ASSOCIATION

P.O. Box 1768 • Bozeman, Montana 59715
(406) 585-8181 • FAX (406) 585-7530

March 5, 1997

Senator Tom Keating
Chairman, Senate Labor and Employment Relations Committee
State Legislature
Helena, Montana

Dear Senator Keating,

We are writing in behalf of the members of the Southwest Montana Building Industry Association in opposition of HB252. We do support SB45 which greatly improves Contractor Registration. We feel that Contractor Registration is the best way to limit the migration of liability that occurs when an independent contractor is injured on the job. We also believe that employers must cover their workers with accident insurance. However, we would like to see the elimination of the C Test.

Our association has over 350 businesses in the Bozeman, Livingston, Big Sky, Ennis, West Yellowstone, Belgrade and Three Forks communities. We conservatively estimate that these businesses represent over 5,000 individuals. Our membership is comprised of not only home builders and sub-contractors, but also Realtors, retailers, lending institutions, communications and hospitality service providers.

We, along with our Board of Directors and members came to Helena to sit in on the HB 252 Hearing in the House on February 7th. We were amazed (but glad to see) how many came from all over the State to oppose HB252.

Thank you for your hard work within the Legislature.

Sincerely,

Sandi Nichols
Executive Officer
SWMBIA

Russ Squire
President
SWMBIA
V.P., D.A. Davidson

MISSOULA BUILDING
INDUSTRY ASSOCIATION, INC.

3700 Russell Street, Suite 120 C-6 • Missoula, MT 59801
406-543-4423

March 5, 1997

Senate Labor and Employment Relations Committee
Montana State Capitol
Helena, MT 59601

Attn: Senator Tom Keating, Chairman

Dear Senator Keating:

I am writing to you on behalf of the 137 members of the Missoula Building Industry Association. We adamantly oppose House Bill #252 to repeal Contractor Registration in Montana. We strongly support and are in favor of streamlining and improving the current process of Contractor Registration. We are also in favor of elimination of the C test. We urge you to consider our position on this issue and appreciate your hard work and dedication during this Session. Thank you.

Sincerely,

Bonnie Snowden
Executive Officer
MBIA

Bitterroot Building Association
302 N. 1st. Street Hamilton, MT 59840
(406) 363-0551

March 6,1997

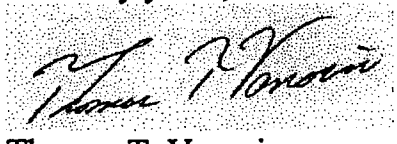
Sen. Thomas F. Keating
Chairman Senate Committee on Labor and Employment Relations
Capitol Station
Helena, MT 59620

Dear Senator Keating:

I am writing on behalf of the Bitterroot Building Association and its 51 members, and approximately 300 other construction related workers, to tell you that we strongly oppose House Bill 252. We strongly support Contractor Registration. We believe that Contractor Registration is a big step towards helping us prove to our clients, and the general public, that the people they are hiring in the construction industry are legitimate and in compliance with the laws of the state.

We oppose House Bill 252 and support Contractor Registration and hope we can count on your support and leadership on this issue.

Sincerely yours,



Thomas T. Vanorio
B.B.A. President

H·O·M·E
BUILDERS
ASSOCIATION
of GREAT FALLS

P.O. Box 2724 • Great Falls, Montana 59403 • Phone & Fax (406) 452-4663

March 7,1997

Senate Labor & Employment Relations Committee
Senator Tom Keating, Chairman
State Capitol
Helena, MT 59601

Dear Senator Keating:

As a member and officer of the Board of Directors for the Home Builders Association of Great Falls, I'm speaking on behalf of 99 members in our market resulting in the employment and support to approximately 4,500 families.

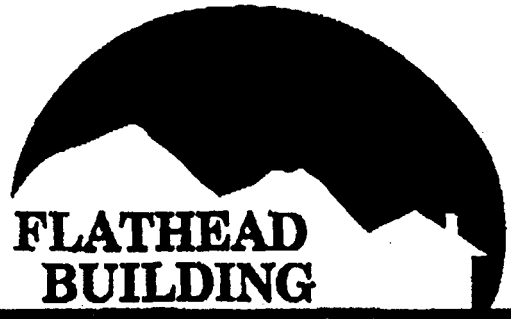
I realize the importance of the Contractor Registration Law to the industry, I am opposed to HB 252, the elimination of this law. I do however favor a slimmed down version of the existing law which will result in a more efficent contractor registration program.

I urge you to vote against HB 252.

Sincerely

Thomas Hardin

Tom Hardin
President HBA GF
Thomas E. Hardin Construction



Fax

March 6, 1997

To: Senator Tom Keating
Chm, Senate Labor & Employment Relations Committee

From: Mary-Bye Pickering, Executive Officer
Flathead Building Association

Re: **OPPOSITION TO HB 252**

Senator Keating, I represent a trade association serving the Flathead County area with 170+ members encompassing approximately 4,000 employees, associated with the Montana Building Industry Association and the National Association of Home Builders.

We strongly oppose HB 252 and favor a more slimmed down, more efficient Contractor Registration program. Please vote accordingly!

1702-5th Avenue East • Kalispell MT 59901 • (406) 752-2422 FAX: (406) 752-5122

Affiliated with the National Association of Home Builders

Helena Building Industry Association
P.O. Box 4502, - Helena, Montana 59604

TO: Senate Labor and Employment Relations Committee
Senator Tom Keating, Chairman

FROM: HBIA Board of Directors

Date: March 10, 1997

Re: HB 252

The HBIA Board of Directors feels that House Bill 252, in repealing the contractor registration, is counterproductive to the concept of accountability. The Board is unanimous in this opinion and urge you to oppose this bill.

Greg Olsen	Consolidated Electric Distributors	President
Dennis Grisamore	Mountain West Builders and Design	Past President
Don Loendorf	Larry Palmer Cabinets	1st Vice President
Skip Verworn	Helena Sand & Gravel	2nd Vice President
Steve Kunnary	Intermountain Lumber & Truss	Secretary\Treasurer
Kelly G. Kelly	Lifetime Seamless Siding	Director
Jim More	Valley Construction	Director
Tom Murphy	Door Systems of Montana	Director
Clyde Quigley	Quigley Construction	Director
Mike Rasmussen	Montana Closetworks	Director
Brian Patzer	Intermountain Heating	Director

03-11-97

I am Stan Fredenburg, from Billings, Mt a small General Contractor and also Sub Contractor in various fields within the Construction and Building Industry. I am registered and bonded carrying insurances for the protection of the persons I contract work with. This is for the safety and welfare of all concerned.

I support 100 percent the Law that was passed in the 1995 Legislature requiring the Registration and Bonding of Construction Contractors with some changes such as: Deleting the wording that denies Court and Lien Rights, Fees to be paid in two year intervals and $500 annual changed to $100 per job or incidental items. There are some who say $2500, but really do you think this can be enforced or kept tract of. This part is only for intent. Our modern day society is very complex on what it demands, visit our courts and see how many lawsuits take place. Really fellows does the state want to take on my liabilities or does it prefer a simple law.

This State needs to progress and insure that all persons doing business in the Construction and Building Industry be identified. The Electricians and Plumbers must be licensed for the safety and welfare of the public, so should the Contractors in the Construction trades be registered. You are either a responsible Contractor or an employee.

The Independent Contractor with a Workmans Compensation exemption will continue to have helpers that are not exempt or registered creating a burden on the Contractor that is responsible to the public. This also creates a double standard for bidding work between a Registered, Bonded, Insured Contractor and a Independent Contractor with an Exemption from Workmans Compensation.

The elimination of this Registration requirement keeps the door open for tax evaders and child support payment evaders. This state has become a haven for individuals from other states namely to the extremes of the Unibomber and Freemen. What a place to operate in and go undetected.

We have numerous amount of laws that are for the protection of the public, but if you really get down to it, you might find they attack our rights, but why do we have these laws? They are there to help govern our land and our individuals. Unfortunately we can't live equal and be fair to one another as we have manipulators, who are always looking to getting something for nothing and placing the burden on the rest of us.

Stan Fredenburg

Stan Fredenburg
C&C Drywall Construction &
Ceiling Interiors, Inc.

When the Uninsured Employers fund sued me when Richards v. McLean would not pay back the 34,000 they got by lying.

COPY

STUART L. KELLNER
HUGHES, KELLNER, SULLIVAN & ALKE
404 Fuller Avenue
P.O. Box 1166
Helena, MT 59624-1166
(406) 442-3690

ATTORNEYS FOR RESPONDENT
CARL HAFER

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

* * * * *

UNINSURED EMPLOYERS' FUND, Petitioner, -vs- JAMES R. RICHARDS, JR. and CARL HAFER, Respondents.	NO. 9311-6945 BRIEF IN SUPPORT OF RESPONDENT CARL HAFER'S MOTION FOR SUMMARY RULING

On September 25, 1989, Respondent James R. Richards, Jr. (Richards) was injured while working on a barn he was constructing for Respondent Carl Hafer (Hafer). Richards received electrical burns when he raised the air hammer he was operating over his head and made contact with an electrical transmission line. Hafer hired Richards as an independent contractor and for that reason did not have workers' compensation insurance.

Alleging that he was an employee of Hafer, and that Hafer did not have workers' compensation insurance, Richards filed a claim for benefits with the Uninsured Employers' Fund (Fund). The Fund initially denied Richards' claim for the reason that he was an independent contractor. Later, upon reconsideration, the Fund decided that Richards was an employee and paid his medical expenses and benefits totalling approximately $34,500.

Pursuant to § 39-71-508, MCA, Richards filed suit in the Second Judicial District Court, Silver Bow County, seeking damages from Hafer for personal injuries. During the course of discovery in that action, Richards admitted that he was working as an independent

contractor building the barn for Hafer at the time he was injured. Richards settled the claims asserted against Hafer in that action in consideration of the payment of $120,000, which included Hafer's homeowner's insurance limits of $100,000 and a $20,000 contribution from Hafer, individually. Further, in consideration of the settlement, Richards executed a release in favor of Hafer and agreed to indemnify Hafer against any claims by the Fund for reimbursement, plus attorney's fees and costs. In anticipation of a claim by the Fund for reimbursement, Richards held in trust from the settlement an amount equal to the benefits paid by the Fund. Richards and the Fund have been unable to agree to a compromise of the Fund's claim.

When the Fund initiated this action, Hafer requested Richards to defend Hafer and indemnify Hafer for any judgment entered against Hafer, plus attorney's fees and costs. Richards refused Hafer's request.

UNDISPUTED FACTS

It was Hafer's intention to hire Richards as an independent contractor, and he believed Richards was working as an independent contractor on the barn at the time of his injury (Hafer's Depo., p. 9, l. 21 – p. 10, l. 2, attached). Richards admits that at the time he was building the barn for Hafer he was working as an independent contractor. (Richards' Response to Hafer's Request for Admission 3, attached).

ARGUMENT

Although admitting that he was working on Hafer's barn as an independent contractor, Richards claims that he was also a "statutory employee". The claim that he was an employee is based upon the Montana Supreme Court's decision in ***Cain v. Stevenson, 218 Mont. 101, 706 P.2d 128 (1985)***. That case holds that independent contractors are entitled to the protection of Montana's Safe Place to Work statutes, §§ 50-71-201 and 202, MCA. The Court did not decide that independent contractors are employees, but rather that those

statutes require employers to provide a safe place to work for both employees and independent contractors. Moreover, the Supreme Court's statutory construction which includes independent contractors within the contemplation of the Safe Place to Work statutes, does not permit or support the further conclusion that independent contractors are entitled to assert the remedies afforded employees under the Workers' Compensation Act. By definition independent contractors are excluded from the protection of the Workers' Compensation Act. § 39-71-118(1)(a), MCA. Further, having hired Richards as an independent contractor, Hafer was not an "uninsured employer" within the contemplation of the statutes governing the Uninsured Employers' Fund, §§ 39-71-501, *et seq.*, MCA.

In summary, given the undisputed facts and the foregoing law, Hafer is entitled to a summary ruling that he cannot, as a matter of law, be found liable to the Fund. Therefore, Hafer respectfully requests that this action be dismissed as to him.

DATED January 17, 1994.

HUGHES, KELLNER, SULLIVAN & ALKE

ORIGINAL SIGNED BY
Stuart L. Kellner

By _____

Stuart L. Kellner
404 Fuller Avenue
P.O. Box 1166
Helena, MT 59624-1166

ATTORNEYS FOR RESPONDENT CARL HAFER

LAW OFFICES

HUGHES, KELLNER, SULLIVAN & ALKE

406 FULLER AVENUE P.O. BOX 1166

HELENA, MONTANA 59624

MICHAEL J. HUGHES
STUART L. KELLNER
JOHN F. SULLIVAN
JOHN ALKE
MIKE McCARTER
STEPHEN M. FRANKINO
CHRIS D. TWEETEN

TELEPHONE
(406) 442-3690

FAX
(406) 449-4849

March 9, 1994

SUBJECT: HKSA 508-1

UNINSURED EMPLOYERS' FUND v. JAMES RICHARDS, JR. and CARL HAFER

Michael J. McKeon
McKeon and Anderson, P.C.
2829 Lexington
P.O. Box 3329
Butte, MT 59701

Dear Mick:

Now that this matter is concluded, Carl Hafer has asked that I reiterate his demand that Mr. Richards reimburse him for the fees and costs he incurred as a result of having to have me defend him in this action. Those fees and costs total $635.75. I would appreciate it if you would communicate Mr. Hafer's demand to Mr. Richards who, I hope, will acknowledge the responsibility he assumed when he settled the original action and signed the release.

I look forward to hearing from you at your earliest convenience.

Best regards,

Stu

Stuart L. Kellner

kp:Hafer.McKeon

c: Carl Hafer

Mr Richards & Mickey McKeon refused to pay this as they had agreed to do when I had to pay $20,000

MONTANA SENATE
1997 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 3-13-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
CASEY EMERSON	✓		
DALE MAHLUM	✓		
DEBBIE SHEA	✓		
FRED THOMAS	✓		
BILL WILSON	✓		
JIM BURNETT, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

DATE 3-13-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: HB252

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
James Eberly Jr.	Custom Paint	252	✓	
Brian Ackerson	Geres electric	252	✓	
Gene Ackerson	Gene Electric	252	✓	
Sandy Hafla	Hafla Const	252	✓	
Dick Skees	Skees, Const	252	✓	
Micah Emmert	Skees Const.	252	✓	
Mel Christiaens	Mel Christiaens Const	252	✓	
Bob Fusie	Individual	252		
Don Chance	Mt. Building Ind Assoc	252		✓
Larry Brown	Ag Pres Assoc	252	✓	
John Blamquist	Mt. Stockgrowers	252		
Bob Worthington	MMTA	252		—
Jacqueline Lenmark	Am. Ins. Assoc	252		X
Debbie Gill	self	252	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 3-13-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: HB 252

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Lois B. Owsley	Voter	HB252	✓	
Gordon Owsley	VOTER	4252	✓	
Carol Nagle	"	252		✓
Carl Schwartz	MT Const Assn	232		✓
Charles J. Judge	Self	252	✓	
Russ Penkal	Indep. Contractors of MT	252	✓	
Jeff Terronina	PAINTER	252	✓	
Hal Halla	Backhoe of Trending	252	✓	
Dean Randash	NAPA Auto Parts	252	✓	
Rory Graham	Cement Finisher	252	✓	
Dennis Roehl	Drywall + Taping	252	✓	
CHUCK HUNTER	DOLI	252		✓
Don Judge	MT State AFL-CIO	HB 252		X
David Owen	MT Chamber	252		X

VISITOR REGISTER

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REGISTER.F10

DATE 3-13-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: HB 252

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Tom Harrison	Concrete Const	HB252	X	
Don KRAMER	WATTNEM CONSTR	252	X	
John Novotny	Novotny Land & Cattle		X	
JEFF INGRAM	WATTNEM CONST.	252	X	
Bob Fitte	Residential Remodelin	252	X	
Barry Klose	Concrete Const	252	X	
Jim Mallard	Mall and Const	252	X	
Joe Thielen	Cornerstone Const	252	X	
Alex Martin	Martin Construction	Yes 252	X	
Walt Dyson	Self	HB 252	X	
STEVE HOWELL	J&K Construction	HB 252	X	
Steve Hadway	Buffalo Horn Enterprisis Bozeman, MT	HB 252	X	
Delbert Hostetter	CONTRACTOR Manhattan MT	HB 252	X	
Ken Hoyna	Ken Hoyna	H.B. 252	X	

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DATE 3-13-97

SENATE COMMITTEE ON LABOR

BILLS BEING HEARD TODAY: HB 252

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
R Kusmierek	self	252	✓	
V Kaluzick	self	252	✓	
Tony Hafla	Tandaj Inc	252	✓	
Joe Schlemmer	self	252	✓	
Tom Hennings		252	✓	
Tom Crowe	Big Sky Sprinklers	252	✓	
Russ Waltman	Waltman Const	252	✓	
Ryan Pearson	Constructive Remedies	252	✓	
Dick Rossignol	Rossignol Const.	252	✓	
Bobbie Rossignol	self	252	✓	
John M. Deutderder	Self	252		✓
Lawrence Hubbard	State Fund	252		✓
Jim Dodge	Best Dam Painting	252	✓	
George Wood	MT Self Insurers Assoc			✓

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DATE 3-13-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: HB 252

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Dick Green	Self	252	X	
John Erickson	Repair & Remodeling	252	X	
Riley Johnson	VFW	252	X	
Bob Becker	Bob's Cabinet Shop	252	X	
Rod Becker	Becker Cabinet & Millwork	252	X	
Sam Turley	J&S Mobile	252	X	
Paul Gregory	Self	252	X	
Jim Wright	Self	252	X	
Bob Davies	Self	252	X	
Ben Ailt	self	252	X	
Leon Patton	L+R Carpet	252	X	
Kevin Nelson	Geo Tech	252	X	
Roger Burkstrand	Rogers Roofing	252	X	
Bernard Burkstrand	Rogers Roofing	252	X	

VISITOR REGISTER

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REGISTER.F10

DATE 3-13-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: 252

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Annette Epple	TANDA, INC	252	✓	
Dave Cole	DC Construction	252	✓	
Jerry Graham	Independent Concrete Finisher	252	✓	
Jason Christians	Mel Christians Const.	252	✓	
Lorretta Ryder	Independent	252		
Don Judge	MT STATE AFL-CIO	HB 252		X
Nick Nicola	Nick Nicola Concrete	HB 252	X	
Gary Arnold	G2 Arnold Concrete	HB 252	X	

VISITOR REGISTER

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REGISTER.F10

DATE 3-13-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: HB 252

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Dave Cogley	Self	252		✓

VISITOR REGISTER

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REGISTER.F10

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN THOMAS F. KEATING**, on March 20, 1997, at 3:25 p.m., in Room 413/415.

ROLL CALL

Members Present:
Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Legislative Services Division
Janice Soft, Substitute Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted:
Executive Action: HB 345, BE CONCURRED IN AS AMENDED
HB 517, BE CONCURRED IN AS AMENDED
HB 519, TABLED
HB 252, TABLED

EXECUTIVE ACTION ON HB 345

Amendments: HB034501.AEM & HB034505.ASM **(EXHIBITS 1 - 4)**

Motion: **SEN. STEVE BENEDICT** moved do-concur on HB 345 and on amendment **(EXHIBIT 1)**.

Discussion: **Carl Schweitzer, Montana Contractors' Association,** said amendment number 1 through 4 **(EXHIBIT 1)**, involve those drug

primary care providers. When 'provider' is put in place of 'physician', this opens it up to massage therapists, etc., because provider is such a broad term.

SEN. EMERSON said he sees it a different way and is still against that portion of the amendment.

Vote: Motion to add amendment to HB 519 carried with a 8 to 9 voice vote. **SEN. EMERSON** voted against it.

Motion/Vote: **SEN. BENEDICT** offered a substitute motion to table HB 519. Motion passed 5 to 4 on a Roll Call Vote.

EXECUTIVE ACTION ON HB 252

Amendments: HB025202.ASM & HB025201.AEM **(EXHIBITS 8 & 9)**

Motion: **SEN. BENEDICT** moved do concur HB 252.

Discussion: **SEN. THOMAS** said this bill is a very significant issue and SB 5, in essence, does the same thing HB 252 does and was tabled. A great deal of work was done on SB 45 and **SEN. THOMAS** believes the House Committee will take that bill off the table tomorrow. He thinks the committee should wait to see what is done with SB 45.

Motion: **SEN. THOMAS** moved to table HB 252.

SEN. BENEDICT said he strongly objects because it is generally understood that a table motion is not offered without at least some discussion on the bill. He said he had the courtesy to allow discussion on HB 519 before it was tabled, he would at least like to have that discussion.

CHAIRMAN KEATING said he would like to have discussion first.

SEN. THOMAS agreed to this and withdrew his motion to table HB 252.

Motion/Vote: **SEN. BENEDICT** moved both amendments **(EXHIBITS 8 & 9)** be added to HB 252.

Discussion: **SEN. BENEDICT** said **EXHIBIT 8** is a simple amendment to make sure that it is Workers' Compensation that we are talking about. He stated the other amendment **(EXHIBIT 9)** is more technical.

SEN. THOMAS said in the amendment on page 5, line 15, the word 'claims' is being stricken. He said it seems to him this is outside Section 16 of the Constitution because it deals specifically with Workers' Compensation and not just any claim. He does not think this improves the bill but makes it worse.

SEN. BENEDICT said he disagrees and thinks **REP. MOLNAR** had a very valid reason for adding this. He said part of the reason is that when a person declares to be an independent contractor, he states he does not want to be covered under Workers' Compensation nor will he be covered under Workers' Compensation.

SEN. THOMAS said that does not mean it wipes out the clause of the Constitution which guarantees that person the ability to be covered by Workers' Compensation. It states they have full legal redress, so the Constitution guarantees that this cannot be done.

SEN. BENEDICT said he disagrees, neither **SEN. THOMAS** nor he is a lawyer.

SEN. THOMAS said he did not say that.

SEN. BENEDICT said they are very lucky they are not. He thinks what this is trying to say is they are not asking for coverage. He believes the people **SEN. THOMAS** is addressing are people who are employees. Employees have the ability to access Workers' Compensation. He said this bill gives them the ability to say they are not an employee and do not want to be an employee.

SEN. THOMAS said a person still has full legal redress to be what he really is. He encourages an amendment to this bill.

CHAIRMAN KEATING said he thinks this language should be taken in whole in this instance. Under number 1 the independent contractor is defined. It says they are free from control and direction which separates that employer/employee situation, and that they are engaged in an independently established trade, etc. to define the fact that person is working outside of the employer/employee relationship. He stated this section is the biggest cause of the litigation we have concerning Workers' Compensation in the contractor area.

He stated there are so many people saying they are independent contractors who change their mind when they get hurt. He also said there are many cases which have cost people a lot of money just because of the court's interpretation of these very words. In taking this as a whole and tightening it up Section 1 defines an independent contractor and the remaining strengthens that language by stating if that person holds himself out to be an independent contractor, he cannot change his mind. He can quit being an independent contractor anytime he wants to go to work and become an employee, but if he gets hurt as an independent contractor, he cannot back away from it.

CHAIRMAN KEATING added that a person can file a claim anytime they want to, but if this law were to pass, this language would make it more difficult for that individual to change their mind.

SEN. THOMAS stated this language says an individual representing to the public and it does not say he qualifies under Section 1.

It says this individual cannot file a Workers' Compensation claim. **SEN. THOMAS** still believes this still contrasts to the full legal redress in the Constitution.

SEN. BENEDICT said that is what 25-201 does.

SEN. EMERSON when the full legal redress was added to the Constitution, it wasn't aimed at either one of those definitions. Because of different court cases we do not know what is going to be applied, when we say it is going to work one way, it may not. He said it is a weird interpretation which he tried to get amended out two years and it did not work. He said this has been twisted so badly, it has really fouled up the constitution.

Vote: The motion to add the amendments carried unanimously by voice vote.

Motion: **SEN. BENEDICT** moved do concur in HB 252 as amended.

Discussion: **SEN. BENEDICT** said the House did take out of HB 2 all the money for the contractor registration program, so it is gone. He thinks they are reaffirming the fact that they do not want to see SB 45 pass.

CHAIRMAN KEATING said regarding the sections which are being repealed, under the contractor registration section, which is 39-9-101, parts 1 and 2, the law requires that before anybody can perform any work, they have to register as a contractor. He said he does not have a problem with somebody registering as a contractor.

He said but then, when it gives police powers to the Department of Labor by saying that if you are not registered you cannot advertise to work, if you are not licensed and you are on a job and the Department can shut you down if there is some little thing wrong, right or wrong. That job is shut down, then that person is loosing money, the person that was contracted with who is paying for the job is also loosing money.

CHAIRMAN KEATING said he is having a difficult time with that licensing section with those police powers in the Department of Labor because he does not believe they have demonstrated, in the past, that they are very prudent with their heavy-handedness in regards to rule making and implementing the law. He said he believes they have totally ignored legislative intent and he would really like to tighten up the wording in that section of law so that if there is an infraction or something wrong on the job at least the party has a period of time to correct the situation. If there is a discrepancy out there, the parties should be notified and steps should be taken to correct it without fining somebody, without shutting the job down, etc. That section is repealed which **CHAIRMAN KEATING** said is a real attraction to him.

Substitute Motion: **SEN. THOMAS** moved to table HB 252.

{Tape: 2; Side: A; Approx. Time Count: 4:53 p.m.}

Vote: Motion to table HB 252 carried 5 to 4 on a Roll Call Vote.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8
DATE 3/20/97
BILL NO. HB252

Amendments to House Bill No. 252
Third Reading Copy

Requested by Rep. Molnar
For the Committee on Labor
Prepared by Stephen Maly
March 17, 1997

1. Page 5, line 15.
Strike: "claims"
Insert: "a claim for workers' compensation"

2. Page 10, line 9.
Following: "not"
Strike: the remainder of line 9
Insert: "be covered by the employer's workers' compensation policy."

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9
DATE 3/20/97
BILL NO. HB 252

Amendments to House Bill No. 252
Third Reading Copy

Requested by Representative Molnar
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 10, 1997

1. Page 5, line 14.
Following: "~~met~~"
Insert: "if the requirements of subsection (1) are met"

MONTANA SENATE
1997 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 3/20/97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
CASEY EMERSON	✓		
DALE MAHLUM	✓		
DEBBIE SHEA	✓		
FRED THOMAS	✓		
BILL WILSON	✓		
JIM BURNETT, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

SEN:1997
wp.rollcall.man
CS-09

MONTANA SENATE
1997 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
ROLL CALL VOTE

DATE 3/20/97 BILL NO. HB 252 NUMBER _____

MOTION: TABLE HB 252

NAME	AYE	NO
SUE BARTLETT	✓	
STEVE BENEDICT		✓
CASEY EMERSON		✓
DALE MAHLUM	✓	
DEBBIE SHEA	✓	
FRED THOMAS	✓	
BILL WILSON	✓	
JIM BURNETT, VICE CHAIRMAN		✓
TOM KEATING, CHAIRMAN		✓

SEN:1997
wp:rlclvote.man
CS-11

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN THOMAS F. KEATING**, on March 27, 1997, at 4:32 p.m., in Room 413/415.

ROLL CALL

Members Present:
Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: HB 252; Be Concurred In As Amended
HB 519; Be Concurred In As Amended

EXECUTIVE ACTION ON HB 252

Amendments: HB025208.AEM & HB025205.AEM **(EXHIBITS 1 & 2)**

Motion: **SEN. STEVE BENEDICT** moved to take HB 252 from the table unamended.

Vote: The motion carried unanimously by voice vote.

Motion: **SEN. BENEDICT** moved the amendments **(EXHIBIT 1).**

Discussion: **Eddye McClure** said since numbers 2 and 3 are taken out, there is no number 1.

SEN. BENEDICT said the number 2 amendment restores the definition of the independent contractor to the 'A,B' test which was in law prior to SB 354. We are putting it back prior to 1995 for the independent contractor exemption. It says that a person is an employee if they don't pass the 'A,B' test. The bill still eliminates the 'C' exemption requirement, which caused all the problems with the horseshoers, accountants, etc.

He said this amendment also gives the Department of Labor rule-making authority. He said if we are going to allow for a voluntary independent contractor exemption, then we need to give them the rule-making authority to implement the exemption.

Amendment number 3 is necessary because the bill, as written, creates an internal conflict between the 'A,B' test and the current language at a handshake. Under the 'A,B' test, a person must be an independent contractor both under the contract and the current language the contract would control. **SEN. BENEDICT** said he thinks we need this in order to get rid of the internal conflict.

SEN. BENEDICT said amendment number 4 is the voluntary registration amendment approved by the sponsor which provides for the three-year exemption and a $25 fee. So if a person wants to register as an independent contractor with the State and get an exemption, which is completely voluntary, then they would pay a $25 fee which is good for three years, then a $25 renewal.

He said the number 5 amendment was already adopted in Committee but we took it off by taking the bill off the table unamended. He said this is **George Wood's** amendment, slightly different, but in effect, it takes care of the concerns of **Mr. Wood.**

SEN. BENEDICT stated amendment number 6 clarifies eliminating the migration of liability in that an independent contractor cannot be an employee of someone such as a homeowner because it is casual employment as to that homeowner. He would like this bill to reference the fact they are not an employee rather than the fact the homeowner is not an employer, because in other circumstances they could be an employer. If a person declares to be an independent contractor when he paints someone else's house, then they are not considered an employee of that homeowner.

SEN. CASEY EMERSON said on page 10, line 9 it says "may not come under that plan of compensation". He said compensation covers a lot of things and asked if that shouldn't read a "plan of Workers' Compensation"? He said compensation also includes getting paid for the job and somebody is going to list that and say that it isn't talking about just Workers' Compensation.

Laurence Hubbard, State Fund, said it is his understanding the amendment refers to Workers' Compensation, so he does not believe it refers to wages, or anything but, the insurance policy under Workers' Compensation.

SEN. EMERSON said he realizes that is what it is supposed to stand for, but the way it is written he does not believe is that clear. He asked why not put Workers' Compensation in?

CHAIRMAN TOM KEATING explained that the whole section 39-71-405, page 9 refers to only the Workers' Compensation Act.

SEN. EMERSON said by adding the words 'Workers' Compensation' we can make sure a lawyer along the way, doesn't get a chance to change it.

Motion: **SEN. BENEDICT** moved that the words 'Workers' Compensation' be added to the amendment.

Discussion: **Eddye McClure** said to clarify the issues, when something is stricken the law is being put back the way it is. It is not a repeal.

CHAIRMAN KEATING asked how subsections 2 and 3 read?

Ms. McClure said **SEN. BENEDICT** is taking those sections out of the bill according to his amendment. She said if you were striking the languages underlined, it would go back the way it was. She said he is not taking the whole section out, he is striking subsections 2 and 3 in their entirety.

SEN. BENEDICT said he intended to put the language back prior to 1995, the definition of the independent contractor to the 'A,B' test.

CHAIRMAN KEATING said following the amendment proposed by **SEN. BENEDICT**, in Section 2, 39-71-120, Section 1 is struck. Then, line (c) deletes the language. Also, subsections 2 and 3 are stuck from the bill, but the statutes say subsection 2 reads, "an individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection 1 are met".

Laurence Hubbard said he believed the intent was to simply restore the statute back to the pre-1995 statute. The current amendment as proposed does not do what **SEN. BENEDICT** intended when they were initially requested. **Mr. Hubbard** suggested how the amendments should read.

CHAIRMAN KEATING said if the Committee amends to leave subsection 1 and then delete subsections 2 and 3 in the bill, then subsection 2 in the statutes will remain.

SEN. BENEDICT said that is not his understanding, they still need to take the 'C' part out.

CHAIRMAN KEATING said the 'C' part is coming out, he is talking about subsection 2. Striking it in its entirety from the bill does not take it out of the statutes.

Eddye McClure said it does.

SEN. BENEDICT said the term delete should be used instead of strike.

CHAIRMAN KEATING read the amendment with the changes. He stated this section will read like it did before 1995.

SEN. EMERSON referred to page 10, lines 10, 11 and 12 said that the word 'employer' should read 'employee'.

CHAIRMAN KEATING said it is in the amendment, **SEN. EMERSON** was reading the original bill.

SEN. BENEDICT apologized to the Committee and said those amendments were given him by the State Fund and he did not think they intended to strike subsection 2 in their entirety. He believes they meant to delete, which would simply remove it from the bill but would not take it out of law.

Vote: Motion to add amendments **(EXHIBIT 1)** carried unanimously by voice vote.

Motion: **SEN. FRED THOMAS** moved to add amendments **(EXHIBIT 2).**

Discussion: **SEN. THOMAS** explained the repealer beginning on page 9, beginning with 39-9-101 through 201 is being stricken. Those lines are deleted from the repealer section and they are not being repealed in these amendments.

He said 39-9-204 is being deleted through line 20 and through to 301. They are also being stricken and deleted from the repealer so they would remain in our current code.

SEN. THOMAS went on to explain Statute 302 will be retained. Then the next three statutes would be deleted, beginning with 303, 304, and 401, they would be deleted as repealed. He said he wants everyone to understand they are not being repealed, but retaining them in law.

On the front page of **EXHIBIT 2**, he stated the first and second amendments deal with title. Amendment number 3, he has asked to include the 'whereas' clauses which refer to the high number of accidents in this industry, and the high Workers' Compensation rates. The 'whereas' at the top of page 2 points out the fact the registration law protects a contractor from liabilities for these Workers' Compensation areas.

SEN. THOMAS said the fourth amendment is on page 1, line 17. They are striking the next section and inserting this, which contains the purpose of the legislation in amending in the construction contractors. The second section in amendment number 4 deals with the definitions and includes the term 'construction contractor' and amends construction below and strikes out the language below it in amendment number 4. In Section 3, that same amendment towards the bottom of page 2 amends the registration requirement in eliminating the prohibited acts, statutes, and references in the criminal penalty area, but retained is the registration application of contractors.

CHAIRMAN KEATING asked **SEN. THOMAS** questions regarding the sections he explained. **SEN. THOMAS** restated the information.

SEN. THOMAS explained Section 4 which contains the certificate of registration issuance. This narrows it down to the department issuing the applicant a certificate of registration upon compliance with the registration requirements of this chapter. Most of this section is struck, which deal with the bonding requirements which the State has repealed.

Eddye McClure asked if the first sentence of subsection (2) should be deleted because it is redundant to subsection (1).

SEN. THOMAS agreed with **Ms. McClure**.

SEN. BARTLETT pointed out that subsection (1) does read differently than subsection (2). She suggested that it should read "shall issue a certificate of registration to the applicant upon receipt of a completed application".

CHAIRMAN KEATING said that is what the chapter does. He read the 'registration required application' section.

SEN. THOMAS answered to clarify the issue, in Section 4, they took out the first sentence of subsection (2).

He went on to explain Section 5, page 4, 39-9-206, said now the initial application includes a $50 fee and good for three years, then the renewal is $50 and also good for three years. Then below is amending construction contractors. He said the $50 fee is indifferent to the current $80 fee which was good for one year.

SEN. THOMAS explained Section 6, which eliminates that registration be a prerequisite to suit or filing of a lien which is being struck. They are retaining the limitation on liability.

CHAIRMAN KEATING stated that 39-71-405 is for Workers' Compensation, Unemployment Insurance, and for wages for other registered construction contractors, or for an employee of a construction contractor. That establishes a barrier to the upward migration of liability so that the general contractor,

contracting with a registered construction contractor as a subcontractor, is not liable for their Workers' Compensation, their Unemployment Insurance, their wages and fringe benefits nor "anything in the payroll" as the subcontractor. The subcontractor is responsible for his own employees.

Eddye McClure stated that she is concerned about the where the commas are placed in this section. She said she believes the one comma should be placed after contractor at the bottom of page 4.

George Wood asked if the way it is written if it applies to a corporate entity who hires a prime contractor?

CHAIRMAN KEATING responded the definition of an individual includes a corporation.

SEN. THOMAS explained Section 7 is exemptions to the registration act. Subsection 3 adds the rural cooperative utility as has been needed as per prior testimony. In subsection 4 "when performed by an owner or lessee" is being taken out. In subsection 6 the word 'exclusive' is being added. In subsection 7 'construction' is added and in 8 the limit has been changed to $2,500 and the language at the bottom of that subsection is being taken out. Subsection 9 is reformed so that it applies to a farmer or rancher while engaging in farming.

CHAIRMAN KEATING asked if these were all exemptions to the registration law?

SEN. THOMAS answered they are. He then went through subsections 10 through 24 in terms of words stricken and added to the amendment **(EXHIBIT 2)**, specifically pointing to subsection 12's importance. This applies to an owner who contracts for work to be performed by a registered construction contractor. This exemption does not apply to an owner who is otherwise covered by this chapter. He stated in other words, we are not exempting out a home builder who just builds their own home with the intents of selling it. They would need to register.

SEN. BENEDICT said he is questioning that.

CHAIRMAN KEATING explained a homeowner who has a piece of property and is going to build his own house is not covered under this chapter. But if somebody who says he is a homeowner and plans to build a house to sell is trying to duck the law. This is simply plugging that loophole.

SEN. BENEDICT said he does not think they are trying to duck the law but just building a house. Whether they sell it in 11 months or 13 months makes a huge difference.

SEN. THOMAS said there is another exemption below which deals with that time frame. It simply states that if you are covered

by this act, you are not exempted from it if you build your own home with the intentions of selling it promptly.

SEN. BENEDICT said he still does not understand that. He asked what difference it makes whether someone plans to sell their home in a year and a half or six months? He said if he built a home and kept it for five years or only six months, he is still building it himself.

{Tape: 1; Side: B; Approx. Time Count: 5:19 p.m.}

SEN. THOMAS responded this exemption does not apply to an owner entirely. If you build your own home and build other homes and fall within the statute, then you need to register.

SEN. BENEDICT asked if he was pointing to people who try to get around the act who are actually homebuilders but take the mortgage out in their own name and build the house themselves, then they turn around and sell it but don't buy Workers' Compensation? They don't cover their employees who are working on that job.

SEN. THOMAS answered that is right.

SEN. DALE MAHLUM asked what if there were no employees on that job?

SEN. THOMAS answered this probably wouldn't apply. But this is intended to be applied to exempt the individual building their own house. But it doesn't exempt the guy who builds his own house and other homes.

SEN. BENEDICT said we are exempting him from Workers' Compensation and from hiring those employees, if he holds onto that house for a long time.

SEN. THOMAS stated this only applies to this registration act, not to the Workers' Compensation. The Workers' Compensation law is separate and this won't exempt them from buying Workers' Compensation, only from the registration act.

SEN. BARTLETT said she has been keying in on the words 'with the intention and for the purpose' of promptly selling it, they did not intend to make it their own residence.

SEN. THOMAS said subsection 13 deals with an owner again, working on the owner's property. This is different than an individual building a house. We have an owner who is working on his own property, whether he lives in it or not, that individual is exempted. This exemption does not apply to an owner who is otherwise covered by this chapter who constructs an improvement on the owner's property with the purpose of promptly selling the improved property, though the exemption would apply if the owner has continuously occupied the property as the owner's primary

residence for at least 12 months. Longevity will make the exemption apply for this act.

CHAIRMAN KEATING stated only if he has no employees. If he has employees he is not covered under this chapter.

SEN. THOMAS responded that is correct.

SEN. BENEDICT said the exemption is just for the registration, it is not exempting from having to have Workers' Compensation on the employees.

SEN. THOMAS indicated subsections 14 through 18 were self-explanatory. Subsection 19 deals with the fire suppression or fire protection equipment, those people have to prove Workers' Compensation in order to be licensed as such. Subsection 20 is water well contractors, 21 is tribal members, and 22 is someone engaged in the logging industry building forest roads. 23 deals with somebody who is a tenant of a home and 24 is the big exemption. He is proposing that these amendments are exempted from the registration act. This deals with an independent contractor who has no employees to be exempted from this act, which is a substantial difference from any other legislation. However, on page 7 at the top **(EXHIBIT 2)** they are adding "an independent contractor may voluntarily elect to register under this chapter". He said the purpose of that amendment is so that if registration has its benefits within the State and within the construction industry, some may want to do that whether or not they are required to.

SEN. THOMAS stated that Section 8 deals with advertising and strikes the prohibition on advertising. It adds construction contractor in subsections 2 and 3.

He said Section 9 requires the Department to compile an updated list of the construction contractors who are registered. Every time the word 'construction' is added to 'contractor', this act is being narrowed to just those construction contractors.

In Section 10 the violation infraction is narrowed substantially. **SEN. THOMAS** explained that amendment numbers 5 and 6 puts the language back into the bill as does **SEN. BENEDICT'S** amendments. Number 7, page 8, line 2 has to do with the Workers' Compensation exemption and coordinates it. Number 8, page 8, lines 5 and 6, the new language inserted is being stricken. Number 9 was contained in **SEN. BENEDICT'S** amendments also. In number 10, page 8, line 17, the word 'purposely' is being stricken, then in number 11, Section 405 is being taken out of the bill, so the amendments made for 39-71-405 are being stricken. Number 12 adds a severability clause and 13 deletes the repealing language.

CHAIRMAN KEATING stated **SEN. THOMAS'** amendment covers his amendment 1, 2, 3, 4, numbers 5 and 6 are skipped, include

amendment 7, skip amendment 8 and 9, and includes amendments 10, 11, 12, and 13.

SEN. EMERSON asked **SEN. THOMAS** why the 'whereas' clauses are needed in his amendments.

SEN. THOMAS said he encourages those because he believes the purpose of this law is because in this construction industry, the reason Workers' Compensation rates are so high is because of a high incident of injury. There is a need for structure in the old law. In chapter law, a court which is looking at the action, could look at this and the 'whereas' clauses adds more guidance.

SEN. EMERSON said he knows with the punctuation and the words he could go through it and find contradictions. He thinks this will turn out to be a negative thing and is clouding the issue. He would like to see the 'whereas' clauses taken out.

SEN. THOMAS said it is his opinion that the court is not going to look at each word and phrase. The intent and the application is why this legislation is taking place.

SEN. BENEDICT stated he is probably going to vote against these amendments because they contain some things he does not agree with. He said he appreciates the hard work which has gone into trying to get this bill out of committee. This bill obviously had problems or it would not have been tabled in Committee. He stated he will probably vote for the bill and vote against the amendments.

SEN. EMERSON said if the amendments were segregated there are parts he would vote for and parts he would vote against.

CHAIRMAN KEATING told **SEN. EMERSON** he had the right to move to segregate the amendments if he wished or if he would like to offer an amendment to the amendment, he could do that as well.

SEN. EMERSON asked **SEN. THOMAS** what he would like to do.

SEN. THOMAS answered he would encourage **SEN. EMERSON** to vote for the amendments as a package, then weigh it as a whole as the bill amended, but he won't object to **SEN. EMERSON** offering a substitute motion.

SEN. THOMAS also stated he believes that the Committee as a whole has done well in dealing with this issue. It is an important issue to this legislative session. He thinks there are some things in the amendments that are excellent, for example, an individual with no employees. He believes it is their intent as the legislature to deal with this issue.

CHAIRMAN KEATING offered his opinion on the 'whereas' clauses. He said the Department of Labor still has rule-making authority in the statutes. The 'whereas' clauses give legislative intent.

He believes that will have weight if the Department were to consider rule-making in this chapter. They can be misinterpreted as in any other language, but the courts and the Department can read English and they should properly interpret this. He stated he realizes they are taking a chance, but he believes the odds are good. He stated there is not a statement of intent on this bill, because they are not asking for rule-making. He said for that reason, he supports the 'whereas' clauses.

Motion: **SEN. EMERSON** moved to segregate all the 'whereas' clauses, amendment number 3.

Discussion: **CHAIRMAN KEATING** said he would like to go to amendments numbers 5 and 6. These were discussed as not to be included. He stated **Eddye McClure** pointed out to him that portion of the bill has been amended with **SEN. BENEDICT'S** amendments, however, there is some confusion in that language. Amendments numbers 5 and 6 are clear in this set of amendments **(EXHIBIT 2)** and if they are accepted by the Committee, they will override the language in amendments **(EXHIBIT 1)**. Then that section will be perfected.

SEN. BENEDICT agreed to this.

CHAIRMAN KEATING stated that amendments 8 and 9 are still out.

Vote: **THE MOTION TO SEGREGATE AMENDMENT NUMBER 3 FAILED WITH A 7 TO 2 ROLL CALL VOTE.**

Motion: **SEN. EMERSON** moved to segregate amendment number 4, Section 10 from the amendments **(EXHIBIT 2)**.

Discussion: **SEN. MAHLUM** asked **Eddye McClure** for an interpretation of this amendment.

Ms. McClure responded that basically it states if a person has a valid registration, it cannot be transferred to someone else or allow someone else to use it.

SEN. EMERSON said if the Committee looks at page 7, Section 8, subsection 2 it states the same thing only with different language, so one of those is redundant.

SEN. THOMAS asked if **SEN. EMERSON'S** intent of changing this is because it is redundant, if it is not redundant is it okay?

SEN. EMERSON responded "yes".

SEN. THOMAS stated in the language of the two different sections, 'falsify' has a different meaning than 'transferring'.

CHAIRMAN KEATING said subsection 3 which **SEN. EMERSON** is referring to says that they may not transfer a valid registration to an unregistered contractor, or allow an unregistered

contractor to work under a registration issue, which is totally different from what Section 8 contains.

SEN. EMERSON said somebody is certainly using an untrue name.

Vote: THE MOTION TO SEGREGATE AMENDMENT 3 FAILED WITH A 2 TO 7 VOICE VOTE. SEN. EMERSON AND SEN. BENEDICT VOTED IN FAVOR OF THE MOTION.

Motion/Vote: SEN. EMERSON moved to change $5,000 to $500 in Section 8, subsection 3. **THE MOTION FAILED WITH A 2 TO 7 VOICE VOTE. SEN. EMERSON** and **SEN. BENEDICT** voted in favor of the motion.

Vote: The **MOTION TO ADD AMENDMENTS (EXHIBIT 2)** with the **EXCEPTION OF NUMBERS 8 AND 9 CARRIED WITH A 7 TO 2 VOICE VOTE. SEN. EMERSON** and **SEN. BENEDICT** voted against the motion.

Motion/Vote: SEN. THOMAS MOVED HB 252 DO CONCUR AS AMENDED. The **MOTION CARRIED WITH A 8 TO 1 VOICE VOTE. SEN. BARTLETT** opposed the motion.

{Tape: 1; Side: 2; Approx. Time Count: 5:55 p.m.}

EXECUTIVE ACTION ON HB 519

Amendments: HB051901.AEM **(EXHIBIT 3)**

Motion: SEN. DEBBIE SHEA MOVED TO TAKE HB 519 OFF THE TABLE AS AMENDED.

Discussion: SEN. SHEA said she does not believe the Committee took a good look at the equity and savings which will be involved with this piece of legislation.

SEN. BARTLETT reiterated what the amendments accomplish. Page 5, line 29 of the bill specifies that an Advanced Practice Registered Nurse who is licensed and recognized by the Board of Nursing and the amendments add the words "practicing in consultation with the physician", if there is not a treating physician as defined elsewhere in the area where the Advanced Nurse is located, would be recognized for the purposes of Workers' Compensation medical care as a treating physician. They are basically saying it is in those areas where there is not a physician and that the Advanced Practice Nurse must be practicing in consultation with a physician.

She said the amendments further strike the change from 'treating physician' to treating provider and make the language 'treating physician'.

SEN. BENEDICT said there is a little conflict if a Physician's Assistant with an Advanced Practice Registered Nurse, in the fact

EXHIBIT 1
DATE 3-27-97
BILL NO. HB 252

Amendments to House Bill No. 252
Third Reading Copy

Requested by Senator Benedict
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 26, 1997

1. Page 5, line 6.
Strike: "(1)"

2. Page 5, lines 12 through 19.
Strike: subsections (2) and (3) in their entirety

3. Page 8, lines 5 and 6.
Following: "department" on line 5
Strike: remainder of line 5 through "status" on line 6

4. Page 8, lines 13 through 16.
Following: "~~exemption.~~"
Strike: remainder of line 13 through "status" on line 16
Insert: "The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption"

5. Page 10, line 9.
Strike: "may not"
Insert: "shall"

6. Page 10, line 12.
Following: "an"
Insert: "employee of the"

EXHIBIT NO. 2
DATE 3-27-97
BILL NO. HB 252

Amendments to House Bill No. 252
Third Reading Copy

Requested by Senator Thomas
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
March 27, 1997

1. Title, lines 9 and 10.
Following: "~~FEES;~~" on line 9
Insert: "ELIMINATING INVESTIGATORY, ENFORCEMENT, NOTICE AND APPEAL PROCEDURES, AND PENALTY PROVISIONS RELATING TO CONTRACTOR REGISTRATION; DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL CERTIFICATE TO A MAXIMUM OF $50 AND THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM OF $50; PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES, FOR CONTRACTORS IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS, AND FOR INDEPENDENT CONTRACTORS [redacted] WHO HAVE NO EMPLOYEES; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; PROVIDING FOR A $25 FEE FOR THE INITIAL EXEMPTION APPLICATION AND FOR EACH SUBSEQUENT RENEWAL;"
Following: "SECTIONS"
Strike: "39-71-118,"
Insert: "39-9-101, 39-9-102, 39-9-201, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, AND 39-9-401,"
Following: "39-71-120,"
Insert: "AND"
Following: "39-71-401," on line 9
Strike: "AND 39-71-405,"
Following: "39-3-706," on line 10
Strike: remainder of line 10 through "39-9-201," on line 11

2. Title, line 12.
Strike: "39-9-204" through "39-9-301," on line 12
Strike: "39-9-303," through "39-9-401,"

3. Page 1.
Following: line 13
Insert: ""WHEREAS, the contractor registration program affects an industry in Montana that has a high number of accidents, resulting in workers' compensation rates that are higher than other industries' and creating a situation that often results in noncompliance with the requirements of the Workers' Compensation Act and the Unemployment Insurance Law; and

WHEREAS, the contractor registration program provides needed structure to the construction industry by providing a means to distinguish, prior to an accident, those persons who qualify as independent contractors and those employers who are required to provide workers' compensation coverage for their

employees; and

WHEREAS, the contractor registration law protects a contractor from the liabilities for workers' compensation and unemployment insurance obligations that exist from contracting with a contractor who is not in compliance with those laws by removing those liabilities when a contractor contracts with a registered contractor."

4. Page 1, line 17 through page 5, line 3.
Strike: section 1 in its entirety
Insert: "**Section 1.** Section 39-9-101, MCA, is amended to read:

"**39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors are competing fairly and in compliance with state laws."

Section 2. Section 39-9-102, MCA, is amended to read:

"**39-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "~~Contractor~~ Construction contractor" means a person, firm, or corporation that:

(a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works, or the installation or repair of roofing or siding; or

(b) in order to do work similar to that described in subsection (1)(a) upon the construction contractor's property, employs members of more than one trade on a single job or under a single building permit, except as otherwise provided.

(2) "Department" means the department of labor and industry.

~~(3) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole or in part.~~

~~(4) "Specialty contractor" means a contractor whose operations do not fall within the definition of general contractor.~~

~~(5) "Verification" means the receipt and duplication by a political subdivision of a contractor registration card that is current on its face.~~"

Section 3. Section 39-9-201, MCA, is amended to read:

"**39-9-201. Registration required -- ~~prohibited acts -- criminal penalty~~ application.** (1) ~~On or before July 1, 1996, each~~ Each construction contractor shall register with the department.

(2) ~~It is a misdemeanor for a contractor to:~~

~~(a) advertise, offer to perform work, submit a bid, or perform work as a contractor:~~

~~(i) without being registered as required by this chapter; or~~

~~(ii) when the contractor's registration is suspended;~~

~~(b) use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required; or~~

~~(c)transfer a valid registration to an unregistered contractor to work under a registration issued to another contractor.~~

~~(3) The department may cause the criminal proceedings for a misdemeanor action under this chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the infraction occurs~~ An applicant for registration as a construction contractor shall submit an application under oath on a form to be provided by the department that must include the following information:

(a) the applicant's social security number;

(b) proof of compliance with workers' compensation laws;

(c) the I.R.S. employer identification number, if any; and

(d) the name and address of:

(i) each partner if the applicant is a firm or partnership;

(ii) the owner if the applicant is an individual proprietorship;

(iii) the corporate officers and registered agent if the applicant is a corporation; or

(iv) the manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company."

Section 4. Section 39-9-204, MCA, is amended to read:

"**39-9-204. Certificate of registration -- issuance -- duration ~~-- renewal -- suspension~~.** (1) The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) ~~If the~~ The department ~~approves an application, it~~ shall issue a certificate of registration to the applicant. The department shall place the expiration date on the certificate. ~~Except as provided in subsection (3), the~~ The certificate is valid ~~until the earliest date of:~~

~~(a) 1 year the expiration date, which must be for a period of at least 2 years but less than~~ for 3 years~~; or~~

~~(b) the date the bond expires; or~~

~~(c) the date the workers' compensation or unemployment insurance expires or any applicable exemption terminates.~~

~~(3) The certificate issued under this section to an independent contractor is invalid on the date the contractor hires employees unless the contractor provides proof to the department of workers' compensation coverage for those employees~~.

~~(4) A contractor may supply a short-term bond or insurance policy to bring its registration period to the full 1 year.~~

~~(5) If a contractor's surety bond or other security has an unsatisfied judgment against it or it is canceled, the contractor's registration is automatically suspended on the effective date of the impairment or cancellation. The department shall give notice of the suspension to the contractor.~~"

Section 5. Section 39-9-206, MCA, is amended to read:

"**39-9-206. Fees -- education program.** (1) The department shall charge fees for:

(a) issuance, renewal, and reinstatement of certificates of registration; and

(b) changes of name, address, or business structure.

(2) The department shall set the fees by administrative rule. The fees shall cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include reproduction, travel, per diem, and administrative and legal support costs.

(3) The fees charged in subsection (1)(a) may not exceed ~~$80~~:

(a) $50 for the initial registration certificate; or

(b) $50 for the renewal or reinstatement of a registration certificate.

(4) The fees collected under this section must be deposited in the state special revenue account to the credit of the department for the administration and enforcement of this chapter.

(5) The department shall establish, cooperatively with representatives of the building industry, an industry and consumer information program, funded with 15% of the fees, to educate the building industry about the registration program and to educate the public regarding the hiring of building construction contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption may not exceed the fee charged for a certificate of registration."

Section 6. Section 39-9-207, MCA, is amended to read:

"**39-9-207. ~~Registration prerequisite to suit or lien claim~~ Contractor registration -- limiting liability.** ~~(1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain an action in any court of this state for the collection of compensation for the performance of any work or for breach of contract for which registration is required under this chapter without alleging and proving that the contractor was a registered contractor and held a current and valid certificate of registration at the time the contractor entered the contract for the performance of work.~~

~~(2) For the purposes of this section, the court may not find a contractor in compliance with the registration requirements of this chapter unless:~~

~~(a) the department has on file the information required by 39-9-202; and~~

~~(b) the contractor has a current bond or other security as required by 39-9-203.~~

~~(3) In determining whether a contractor is in compliance with the registration requirements of this chapter, the court shall consider the length of time during which the contractor did not hold a valid certificate of registration.~~

~~(4) A contractor may not bring or maintain a lien claim under Title 71, chapter 3, part 5, unless the contractor is registered at the time of entering into a contract.~~

~~(5)~~ A person, including a construction contractor engaging

the services of ~~another~~ a registered construction contractor, is not liable as an employer under 39-71-405 for workers' compensation and unemployment insurance coverage or for wages and fringe benefits for the other registered construction contractor or for any employee of the other construction contractor ~~if the contractor verifies with the department that the other contractor with whom the contractor is contracting for services is registered as provided under this chapter~~."

Section 7. Section 39-9-211, MCA, is amended to read:

"**39-9-211. Exemptions.** This chapter does not apply:

(1) to an authorized representative of the United States government, the state of Montana, or any incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) to an officer of a court acting within the scope of office;

(3) to a public utility operating under the regulations of the public service commission or to a rural cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work incidental to its own business;

(4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit ~~when performed by an owner or lessee~~;

(5) to the sale or installation of finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of a site or reservation under the exclusive legal jurisdiction of the federal government;

(7) to a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the construction contractor;

(8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than ~~$500~~ $2,500 a job. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than ~~$500~~ $2,500 a job for the purpose of evasion of this chapter or otherwise. ~~The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor or is qualified to engage in the business of a contractor.~~

(9) ~~except when work is performed by a registered contractor,~~ to a ~~construction or operation incidental to the~~

~~construction or repair:~~ farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;

~~(a)~~(10) ~~of irrigation and drainage ditches of~~ to an irrigation district or reclamation district;

~~(b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or~~

~~(c)~~(11) to an operation related to clearing or other work upon land in rural districts for fire prevention purposes;

~~(10)~~(12) to an owner who contracts for ~~a project with~~ work to be performed by a registered construction contractor, but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on the owner's property with the intention and for the purpose of promptly selling the improved property;

~~(11)~~(13) to ~~a person~~ an owner working on the ~~person's~~ owner's property, whether occupied by the ~~person~~ owner or not, ~~and a person working on the person's residence, whether owned by the person or not,~~ but this exemption does not apply to ~~a person~~ an owner who is otherwise covered by this chapter who constructs an improvement on the ~~person's~~ owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for at least the last 12 months;

~~(12)~~(14) to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

~~(13)~~(15) to ~~a licensed~~ an architect, ~~or~~ civil or professional engineer, or professional land surveyor, licensed in Montana and acting solely in a professional capacity;

~~(14)~~(16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

~~(15)~~(17) to a contract security company, licensed under Title 37, chapter 60, operating within the scope of the license; ~~or~~

~~(16)~~(18) to a person who engages in the activities regulated as an employee of a registered construction contractor with wages as the sole compensation or as an employee with wages as the sole compensation;

(19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire suppression or fire protection equipment;

(20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water well contractor;

(21) to an enrolled tribal member or an association, business, corporation, or other entity, at least 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely within the exterior boundaries of an Indian reservation;

(22) to a contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;

(23) to a person working on the person's own residence, if the residence is owned by a person other than the resident; or

(24) to an independent contractor who has no employees.

However, an independent contractor may voluntarily elect to register under this chapter."

Section 8. Section 39-9-301, MCA, is amended to read:

"**39-9-301. Business practices -- ~~advertising --~~ penalty.** (1) Except as provided in 39-9-205, a person who has registered under one name as provided in this chapter may not engage in the business or act in the capacity of a construction contractor under any other name unless that name also is registered under this chapter.

~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters, papers, and documents that show a contractor's name or address must show the contractor's name and address as registered under this chapter.~~

~~(3) (a) The alphabetized listing of contractors appearing in the advertising section of directories, excluding telephone books, and all advertising must show the contractor's current registration number. However, signs on motor vehicles and on-premises signs do not constitute advertising under this section.~~

~~(b) All materials used to directly solicit business from retail customers who are not businesses must show a contractor's current registration number. A contractor may not use a false or expired registration number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not subject to this subsection.~~

~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to be filed provided in 39-9-203.~~

~~(5)~~(2) A construction contractor may not falsify a registration number and use it in connection with a solicitation or identification as a construction contractor. An individual construction contractor, partner, associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true name and address at all times while engaged in the business or capacity of a construction contractor or in activities related to a construction contractor.

~~(6)~~(3) (a) The finding of a violation of this section by the department at a hearing held in accordance with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more than $5,000, as determined by the department. The required hearing may be held by telephone or by videoconference. A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of this chapter.

(b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error."

Section 9. Section 39-9-303, MCA, is amended to read:

"**39-9-303. Department to compile and update list of registered construction contractors -- availability -- fee.** (1) The department shall compile a list of all construction contractors registered under this chapter and update the list at least bimonthly. The list is public information and must be available to the public upon request for a reasonable fee.

(2) The department shall inform a person, firm, or corporation whether a construction contractor is registered. The department shall provide the information without charge, except for a reasonable fee for any copies made."

Section 10. Section 39-9-401, MCA, is amended to read:

"**39-9-401. Violation -- infraction.** ~~(1)~~ It is a violation of this chapter and an infraction for any construction contractor to:

~~(a)~~(1) ~~advertise, offer to perform work, submit a bid, or~~ perform work as a construction contractor without being registered as required by this chapter;

~~(b)~~(2) ~~advertise, offer to perform work, submit a bid, or~~ perform work as a construction contractor when the construction contractor's registration is suspended; or

~~(c)~~(3) transfer a valid registration to an unregistered construction contractor or allow an unregistered construction contractor to work under a registration issued to another construction contractor.

~~(2) Each day that a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction.~~"

Renumber: subsequent sections

5. Page 5, lines 12 and 13.
Following: "remuneration" on line 12
Strike: remainder of line 12 through the first "contractor" on line 13
Following: "an" on line 13
Strike: "independent" through "an"

6. Page 5, lines 14 through 19.
Following: "~~met~~" on line 14
Insert: "unless the requirements of subsection (1) are met"
Following: "."
Strike: remainder of line 14 through "section." on line 19

7. Page 8, line 2.
Strike: "no"
Insert: "a $25"
Following: second "application"
Insert: "renewal"

8. Page 8, lines 5 and 6.
Following: "department"
Strike: remainder of line 5 through "status" on line 6

9. Page 8, lines 13 through 16.

Following: "~~exemption.~~"
Strike: remainder of line 13 through "status" on line 16
Insert: "The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption"

10. Page 8, line 17.
Strike: "purposely"

11. Page 9, line 23 through page 10, line 13.
Strike: section 4 in its entirety
Renumber: subsequent sections

12. Page 10.
Following: line 13
Insert: "NEW SECTION. **Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."
Renumber: subsequent sections

13. Page 10, lines 19 through 21.
Following: "39-3-706," on line 19
Strike: "39-9-101" through "39-9-201,"
Following: "39-9-203,"
Strike: remainder of line 19 through "39-9-301," on line 20
Following: "39-9-302,"
Strike: "39-9-303, 39-9-304, 39-9-401,"

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill 252 (third reading copy -- blue), respectfully report that House Bill 252 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, lines 9 and 10.
Following: "~~FEES;~~" on line 9
Insert: "ELIMINATING INVESTIGATORY, ENFORCEMENT, NOTICE AND APPEAL PROCEDURES, AND PENALTY PROVISIONS RELATING TO CONTRACTOR REGISTRATION; DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL CERTIFICATE TO A MAXIMUM OF $50 AND THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM OF $50; PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES, FOR CONTRACTORS IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS, AND FOR INDEPENDENT CONTRACTORS WHO HAVE NO EMPLOYEES; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; PROVIDING FOR A $25 FEE FOR THE INITIAL EXEMPTION APPLICATION AND FOR EACH SUBSEQUENT RENEWAL;"
Following: "SECTIONS"
Strike: "39-71-118,"
Insert: "39-9-101, 39-9-102, 39-9-201, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, AND 39-9-401,"
Following: "39-71-120,"
Insert: "AND"
Following: "39-71-401," on line 9
Strike: "AND 39-71-405,"
Following: "39-3-706," on line 10
Strike: remainder of line 10 through "39-9-201," on line 11

2. Title, lines 11 and 12.
Strike: "39-9-204" through "39-9-301," on line 12
Strike: "39-9-303," through "39-9-401,"

3. Page 1.
Following: line 13
Insert: ""WHEREAS, the contractor registration program affects an industry in Montana that has a high number of accidents, resulting in workers' compensation rates that are higher

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

than other industries' and creating a situation that often results in noncompliance with the requirements of the Workers' Compensation Act and the Unemployment Insurance Law; and

WHEREAS, the contractor registration program provides needed structure to the construction industry by providing a means to distinguish, prior to an accident, those persons who qualify as independent contractors and those employers who are required to provide workers' compensation coverage for their employees; and

WHEREAS, the contractor registration law protects a contractor from the liabilities for workers' compensation and unemployment insurance obligations that exist from contracting with a contractor who is not in compliance with those laws by removing those liabilities when a contractor contracts with a registered contractor."

4. Page 1, line 17 through page 5, line 3.
Strike: section 1 in its entirety
Insert: "**Section 1.** Section 39-9-101, MCA, is amended to read:

"**39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors are competing fairly and in compliance with state laws."

Section 2. Section 39-9-102, MCA, is amended to read:

"**39-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "~~Contractor~~ Construction contractor" means a person, firm, or corporation that:

(a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works, or the installation or repair of roofing or siding; or

(b) in order to do work similar to that described in subsection (1)(a) upon the construction contractor's property, employs members of more than one trade on a single job or under a single building permit, except as otherwise provided.

(2) "Department" means the department of labor and industry.

~~(3) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole or in part.~~

~~(4) "Specialty contractor" means a contractor whose~~

~~operations do not fall within the definition of general contractor.~~

~~(5) "Verification" means the receipt and duplication by a political subdivision of a contractor registration card that is current on its face.~~"

Section 3. Section 39-9-201, MCA, is amended to read:

"**39-9-201. Registration required -- ~~prohibited acts -- criminal penalty~~ application.** (1) ~~On or before July 1, 1996, each~~ Each construction contractor shall register with the department.

(2) ~~It is a misdemeanor for a contractor to:~~

~~(a) advertise, offer to perform work, submit a bid, or perform work as a contractor:~~

~~(i) without being registered as required by this chapter; or~~

~~(ii) when the contractor's registration is suspended;~~

~~(b) use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required; or~~

~~(c) transfer a valid registration to an unregistered contractor to work under a registration issued to another contractor.~~

~~(3) The department may cause the criminal proceedings for a misdemeanor action under this chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the infraction occurs~~ An applicant for registration as a construction contractor shall submit an application under oath on a form to be provided by the department that must include the following information:

(a) the applicant's social security number;

(b) proof of compliance with workers' compensation laws;

(c) the I.R.S. employer identification number, if any; and

(d) the name and address of:

(i) each partner if the applicant is a firm or partnership;

(ii) the owner if the applicant is an individual proprietorship;

(iii) the corporate officers and registered agent if the applicant is a corporation; or

(iv) the manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company."

Section 4. Section 39-9-204, MCA, is amended to read:

"**39-9-204. Certificate of registration -- issuance -- duration ~~renewal suspension~~.** (1) The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) ~~If the department approves an application, it shall issue a certificate of registration to the applicant.~~ The department shall place the expiration date on the certificate. ~~Except as provided in subsection (3), the~~ The certificate is valid ~~until the earliest date of:~~

~~(a) 1 year the expiration date, which must be for a period of at least 2 years but less than~~ for 3 years~~;~~ ~~or~~

~~(b) the date the bond expires; or~~

~~(c) the date the workers' compensation or unemployment insurance expires or any applicable exemption terminates.~~

~~(3) The certificate issued under this section to an independent contractor is invalid on the date the contractor hires employees unless the contractor provides proof to the department of workers' compensation coverage for those employees~~.

~~(4) A contractor may supply a short term bond or insurance policy to bring its registration period to the full 1 year.~~

~~(5) If a contractor's surety bond or other security has an unsatisfied judgment against it or it is canceled, the contractor's registration is automatically suspended on the effective date of the impairment or cancellation. The department shall give notice of the suspension to the contractor~~."

Section 5. Section 39-9-206, MCA, is amended to read:

"**39-9-206. Fees -- education program.** (1) The department shall charge fees for:

(a) issuance, renewal, and reinstatement of certificates of registration; and

(b) changes of name, address, or business structure.

(2) The department shall set the fees by administrative rule. The fees shall cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include reproduction, travel, per diem, and administrative and legal support costs.

(3) The fees charged in subsection (1)(a) may not exceed ~~$80~~:

(a) $50 for the initial registration certificate; or

(b) $50 for the renewal or reinstatement of a registration certificate.

(4) The fees collected under this section must be deposited in the state special revenue account to the credit of the department for the administration and enforcement of this chapter.

(5) The department shall establish, cooperatively with representatives of the building industry, an industry and consumer information program, funded with 15% of the fees, to educate the building industry about the registration program and to educate the public regarding the hiring of building construction contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption may not exceed the fee charged for a certificate of registration."

Section 6. Section 39-9-207, MCA, is amended to read:

"39-9-207. ~~**Registration prerequisite to suit or lien claim**~~ Contractor registration -- **limiting liability.** ~~(1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain an action in any court of this state for the collection of compensation for the performance of any work or for breach of contract for which registration is required under this chapter without alleging and proving that the contractor was a registered contractor and held a current and valid certificate of registration at the time the contractor entered the contract for the performance of work.~~

~~(2) For the purposes of this section, the court may not find a contractor in compliance with the registration requirements of this chapter unless:~~

~~(a) the department has on file the information required by 39-9-202; and~~

~~(b) the contractor has a current bond or other security as required by 39-9-203.~~

~~(3) In determining whether a contractor is in compliance with the registration requirements of this chapter, the court shall consider the length of time during which the contractor did not hold a valid certificate of registration.~~

~~(4) A contractor may not bring or maintain a lien claim under Title 71, chapter 3, part 5, unless the contractor is registered at the time of entering into a contract.~~

~~(5)~~ A person, including a construction contractor, engaging the services of ~~another~~ a registered construction contractor is not liable as an employer under 39-71-405 for workers' compensation and unemployment insurance coverage or for wages and fringe benefits for the other registered construction contractor or for any employee of the other construction contractor ~~if the contractor verifies with the department that the other contractor with whom the contractor is contracting for services is registered as provided under this chapter~~."

Section 7. Section 39-9-211, MCA, is amended to read:

"**39-9-211. Exemptions.** This chapter does not apply:

(1) to an authorized representative of the United States government, the state of Montana, or any incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) to an officer of a court acting within the scope of office;

(3) to a public utility operating under the regulations of the public service commission or to a rural cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work incidental to its own business;

(4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit ~~when performed by an owner or lessee~~;

(5) to the sale or installation of finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of a site or reservation under the exclusive legal jurisdiction of the federal government;

(7) to a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the construction contractor;

(8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than ~~$500~~ $2,500 a job. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than ~~$500~~ $2,500 a job for the purpose of evasion of this chapter or otherwise. ~~The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor or is qualified to engage in the business of a contractor.~~

(9) ~~except when work is performed by a registered contractor,~~ to a ~~construction or operation incidental to the construction or repair:~~ farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;

~~(a)~~(10) ~~of irrigation and drainage ditches of~~ to an irrigation district or reclamation district;

~~(b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or~~

~~(c)~~(11) to an operation related to clearing or other work upon land in rural districts for fire prevention purposes;

~~(10)~~(12) to an owner who contracts for ~~a project with~~ work to be performed by a registered construction contractor, but this

exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on the owner's property with the intention and for the purpose of promptly selling the improved property;

~~(11)~~(13) to ~~a person~~ an owner working on the ~~person's~~ owner's property, whether occupied by the ~~person~~ owner or not, ~~and a person working on the person's residence, whether owned by the person or not,~~ but this exemption does not apply to ~~a person~~ an owner who is otherwise covered by this chapter who constructs an improvement on the ~~person's~~ owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for at least the last 12 months;

~~(12)~~(14) to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

~~(13)~~(15) to ~~a licensed~~ an architect, ~~or~~ civil or professional engineer, or professional land surveyor, licensed in Montana and acting solely in a professional capacity;

~~(14)~~(16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

~~(15)~~(17) to a contract security company, licensed under Title 37, chapter 60, operating within the scope of the license; ~~or~~

~~(16)~~(18) to a person who engages in the activities regulated as an employee of a registered construction contractor with wages as the sole compensation or as an employee with wages as the sole compensation;

(19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire suppression or fire protection equipment;

(20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water well contractor;

(21) to an enrolled tribal member or an association, business, corporation, or other entity, at least 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely within the exterior boundaries of an Indian reservation;

(22) to a contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;

(23) to a person working on the person's own residence, if the residence is owned by a person other than the resident; or

(24) to an independent contractor who has no employees. However, an independent contractor may voluntarily elect to register under this chapter."

Section 8. Section 39-9-301, MCA, is amended to read:

"**39-9-301. Business practices -- ~~advertising~~ -- penalty.** (1) Except as provided in 39-9-205, a person who has registered under one name as provided in this chapter may not engage in the business or act in the capacity of a construction contractor under any other name unless that name also is registered under this chapter.

~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters, papers, and documents that show a contractor's name or address must show the contractor's name and address as registered under this chapter.~~

~~(3) (a) The alphabetized listing of contractors appearing in the advertising section of directories, excluding telephone books, and all advertising must show the contractor's current registration number. However, signs on motor vehicles and on-premises signs do not constitute advertising under this section.~~

~~(b) All materials used to directly solicit business from retail customers who are not businesses must show a contractor's current registration number. A contractor may not use a false or expired registration number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not subject to this subsection.~~

~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to be filed provided in 39-9-203.~~

~~(5)~~ (2) A construction contractor may not falsify a registration number and use it in connection with a solicitation or identification as a construction contractor. An individual construction contractor, partner, associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true name and address at all times while engaged in the business or capacity of a construction contractor or in activities related to a construction contractor.

~~(6)~~ (3) (a) The finding of a violation of this section by the department at a hearing held in accordance with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more than $5,000, as determined by the department. The required hearing may be held by telephone or by videoconference. A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of this chapter.

(b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error."

Section 9. Section 39-9-303, MCA, is amended to read:

"**39-9-303. Department to compile and update list of registered construction contractors -- availability -- fee.** (1) The department shall compile a list of all construction

contractors registered under this chapter and update the list at least bimonthly. The list is public information and must be available to the public upon request for a reasonable fee.

(2) The department shall inform a person, firm, or corporation whether a construction contractor is registered. The department shall provide the information without charge, except for a reasonable fee for any copies made."

Section 10. Section 39-9-401, MCA, is amended to read:

"**39-9-401. Violation -- infraction.** ~~(1)~~ It is a violation of this chapter and an infraction for any construction contractor to:

~~(a)~~(1) ~~advertise, offer to perform work, submit a bid, or~~ perform work as a construction contractor without being registered as required by this chapter;

~~(b)~~(2) ~~advertise, offer to perform work, submit a bid, or~~ perform work as a construction contractor when the construction contractor's registration is suspended; or

~~(c)~~(3) transfer a valid registration to an unregistered construction contractor or allow an unregistered construction contractor to work under a registration issued to another construction contractor.

~~(2) Each day that a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction.~~"

Renumber: subsequent sections

5. Page 5, lines 12 and 13.
Following: "remuneration" on line 12
Strike: remainder of line 12 through the first "contractor" on line 13
Following: "an" on line 13
Strike: "independent" through "an"

6. Page 5, lines 14 through 19.
Following: "~~met~~" on line 14
Insert: "unless the requirements of subsection (1) are met"
Following: "."
Strike: remainder of line 14 through "section." on line 19

7. Page 8, line 2.

Strike: "no"
Insert: "a $25"
Following: second "application"
Insert: "renewal"

8. Page 8, lines 5 and 6.
Following: "department"
Strike: remainder of line 5 through "status" on line 6

9. Page 8, lines 13 through 16.
Following: "~~exemption.~~"
Strike: remainder of line 13 through "status" on line 16
Insert: "The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption"

10. Page 8, line 17.
Strike: "purposely"

11. Page 9, line 23 through page 10, line 13.
Strike: section 4 in its entirety
Renumber: subsequent sections

12. Page 10.
Following: line 13
Insert: "NEW SECTION. **Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."
Renumber: subsequent sections

13. Page 10, lines 19 through 21.
Following: "39-3-706," on line 19
Strike: "39-9-101" through "39-9-201,"
Following: "39-9-203,"
Strike: remainder of line 19 through "39-9-301," on line 20
Following: "39-9-302,"
Strike: "39-9-303, 39-9-304, 39-9-401,"

-END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON HOUSE BILL 252

Call to Order: By CHAIRMAN FRED THOMAS, on April 18, 1997, at 4:30 PM, in Room 331.

ROLL CALL

Members Present:
Rep. Bruce T. Simon (R)
Rep. Vicki Cocchiarella (D)
Rep. Brad Molnar (R)
Sen. Debbie Bowman Shea (D)
Sen. Ric Holden (R)
Sen. Fred Thomas (R)

Members Excused: None

Members Absent: None

Staff Present: Pati Jo O'Reilly, Committee Secretary
Eddye McClure, Legislative Services Division

EXECUTIVE ACTION ON HB 252

Motion/Vote: **Rep. Molnar** moved to amendment to strike all Senate amendments. Motion fails 1-5. **Rep. Molnar** voted yes.
{Tape: 1; Side: 1; Approx. Time Count: 12.5; Comments: None.}

Discussion:
{Tape: 1; Side: 1; Approx. Time Count: 21.0; Comments: None.}

Motion: **Rep. Simon** moves to adopt committee amendments, striking sub section 5. Motion carried 5-1. **Rep. Molnar** voted no.
{Tape: 3; Side: 1; Approx. Time Count: 25.9; Comments: None.}

Discussion:
{Tape: 3; Side: 1; Approx. Time Count: 28.7; Comments: None.}

Motion/Vote: **Sen. Shea** moved to change to $70.00 for 2 years. Motion carried 5-1. **Rep. Molnar** voted no.
{Tape: 3; Side: 2; Approx. Time Count: 3.8; Comments: None.}

Motion; **Rep. Cocchiarella** moved to put monies in general fund.
{Tape: 3; Side: 2; Approx. Time Count: 7.6; Comments: None.}

Motion/Vote: **Rep. Molnar** moved penalty monies go int UIF fund. Motion carried unanimously.
{Tape: 3; Side: 2; Approx. Time Count: 15.2; Comments: None.}

Motion/Vote: Vote on amended amendments. Motion carried 5-1 **Rep. Molnar** voted no.
{Tape: 3; Side: 2; Approx. Time Count: 15.6; Comments: None.}

Motion/Vote: **Rep. Cocchiarella** moved to change title of bill. Motion carried 5-1 **Rep. Molnar** voted no.
{Tape: 3; Side: 2; Approx. Time Count: 16.8; Comments: None.}

Motion/Vote: **Rep. Molnar** moved to adopt Molnar amendments. Motion failed 1-5. **Rep. Molnar voted yes.**
{Tape: 3; Approx. Time Count: 2; Comments: 18.8.}

Motion: **Rep. Cocchiarella** moved to fund at 4000 with $280.000.00 for 2 years.
{Tape: 4; Side: 1; Approx. Time Count: 2.7; Comments: None.}

Motion: **Rep. Cocchiarella moved substitute motion to change monies to $350,000.00 for two years.**
{Tape: 4; Side: 1; Approx. Time Count: 3.4; Comments: None..}

Motion/Vote: **Sen Holden** makes substitute motion to fund at $280,000.00 for 2 years. Motion failed on tie.
{Tape: 4; Side: 1; Approx. Time Count: 7.6; Comments: None.}

Motion/Vote: **Rep. Cocchiarella** moved to fund at $315,000.00 for two years. Motion carried 5-1. **Rep. Molnar** voted no.
{Tape: 4; Side: 1; Approx. Time Count: 8.9; Comments: None.}

Motion/Vote: **Rep. Simon** moved to adopt Report. Motion carried 5-1. **Rep. Molnar** voted no.
{Tape: 4; Side: 1; Approx. Time Count: 10.0; Comments: None.}

ADJOURNMENT

Adjournment: 6:26 PM

SEN. FRED THOMAS, Chairman

PATI O'REILLY, Secretary

FT/PO

HOUSE BILL NO. 252

INTRODUCED BY MOLNAR, VICK, PROUSE, TASH, BOHARSKI, SLITER, BANKHEAD, MILLER, BEAUDRY, WELLS, ARNOTT, ORR, JORE, HOLLAND, DEVANEY, MCGEE, CURTISS, KEENAN, BITNEY, BAER, ESTRADA, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS AND INDEPENDENT CONTRACTORS; ~~REPEALING CONTRACTOR REGISTRATION REQUIREMENTS;~~ ELIMINATING BONDING REQUIREMENTS FOR CONTRACTORS; ~~REQUIRING THE REFUND OF CONTRACTOR REGISTRATION FEES;~~ ELIMINATING INVESTIGATORY, ENFORCEMENT, NOTICE AND APPEAL PROCEDURES, AND PENALTY PROVISIONS RELATING TO CONTRACTOR REGISTRATION; DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL CERTIFICATE TO A MAXIMUM OF $50 AND THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM OF $50; PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES, FOR CONTRACTORS IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS, AND FOR INDEPENDENT CONTRACTORS WHO HAVE NO EMPLOYEES; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; PROVIDING FOR A $25 FEE FOR THE INITIAL EXEMPTION APPLICATION AND FOR EACH SUBSEQUENT RENEWAL; AMENDING SECTIONS ~~39-71-118,~~ 39-9-101, 39-9-102, 39-9-201, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, 39-9-401, 39-71-120, AND 39-71-401, ~~AND 39-71-405,~~ MCA; REPEALING SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, ~~39-9-101, 39-9-102, 39-9-103, 39-9-201,~~ 39-9-202, 39-9-203, ~~39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211, 39-9-301,~~ 39-9-302, ~~39-9-303, 39-9-304, 39-9-401,~~ 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, AND 39-9-410, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM AFFECTS AN INDUSTRY IN MONTANA THAT HAS A HIGH NUMBER OF ACCIDENTS, RESULTING IN WORKERS' COMPENSATION RATES THAT ARE HIGHER THAN OTHER INDUSTRIES' AND CREATING A SITUATION THAT OFTEN RESULTS IN NONCOMPLIANCE WITH THE REQUIREMENTS OF THE WORKERS' COMPENSATION ACT AND THE UNEMPLOYMENT INSURANCE LAW; AND

WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM PROVIDES NEEDED STRUCTURE TO

THE CONSTRUCTION INDUSTRY BY PROVIDING A MEANS TO DISTINGUISH, PRIOR TO AN ACCIDENT, THOSE PERSONS WHO QUALIFY AS INDEPENDENT CONTRACTORS AND THOSE EMPLOYERS WHO ARE REQUIRED TO PROVIDE WORKERS' COMPENSATION COVERAGE FOR THEIR EMPLOYEES; AND

WHEREAS, THE CONTRACTOR REGISTRATION LAW PROTECTS A CONTRACTOR FROM THE LIABILITIES FOR WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE OBLIGATIONS THAT EXIST FROM CONTRACTING WITH A CONTRACTOR WHO IS NOT IN COMPLIANCE WITH THOSE LAWS BY REMOVING THOSE LIABILITIES WHEN A CONTRACTOR CONTRACTS WITH A REGISTERED CONTRACTOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 39-71-118, MCA, is amended to read:~~

~~**"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term "employee" or "worker" means:~~

~~(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for those casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.~~

~~(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;~~

~~(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.~~

~~(d) an aircrew member or other person employed as a volunteer under 67-2-105;~~

~~(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):~~

~~(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and~~

~~(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.~~

~~(f) an inmate working in a federally certified prison industries program authorized under 53-1-301; and~~

~~(g) a person who is an enrolled member of a volunteer fire department as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1.~~

~~(2) The terms defined in subsection (1) do not include a person who is:~~

~~(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;~~

~~(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities; or~~

~~(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.~~

~~(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).~~

~~(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.~~

~~(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.~~

~~(5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, proprietorship, or limited liability company business.~~

~~(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.~~

~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.~~

~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.~~

~~(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).~~

~~(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.~~

~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.~~

~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not~~

~~less than $200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.~~

~~(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.~~

~~(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.~~

~~(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).~~

~~(9) For purposes of this section, an "employee or worker in this state" means:~~

~~(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;~~

~~(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;~~

~~(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or~~

~~(d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:~~

~~(i) nonresident employees are hired in Montana;~~

~~(ii) nonresident employees' wages are paid in Montana;~~

~~(iii) nonresident employees are supervised in Montana; and~~

~~(iv) business records are maintained in Montana.~~

~~(10) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under subsection (9)(d).~~"

SECTION 1. SECTION 39-9-101, MCA, IS AMENDED TO READ:

"**39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors are competing fairly and in compliance with state laws."

SECTION 2. SECTION 39-9-102, MCA, IS AMENDED TO READ:

"**39-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "~~Contractor~~ Construction contractor" means a person, firm, or corporation that:

(a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works, or the installation or repair of roofing or siding; or

(b) in order to do work similar to that described in subsection (1)(a) upon the construction contractor's property, employs members of more than one trade on a single job or under a single building permit, except as otherwise provided.

(2) "Department" means the department of labor and industry.

~~(3) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole or in part.~~

~~(4) "Specialty contractor" means a contractor whose operations do not fall within the definition of general contractor.~~

~~(5) "Verification" means the receipt and duplication by a political subdivision of a contractor registration card that is current on its face.~~"

SECTION 3. SECTION 39-9-201, MCA, IS AMENDED TO READ:

"**39-9-201. Registration required -- ~~prohibited acts -- criminal penalty~~ application.** (1) ~~On or before July 1, 1996, each~~ Each construction contractor shall register with the department.

(2) ~~It is a misdemeanor for a contractor to:~~

~~(a) advertise, offer to perform work, submit a bid, or perform work as a contractor:~~

~~(i) without being registered as required by this chapter; or~~

~~(ii) when the contractor's registration is suspended;~~

~~(b) use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required; or~~

~~(c) transfer a valid registration to an unregistered contractor to work under a registration issued to another contractor.~~

~~(3) The department may cause the criminal proceedings for a misdemeanor action under this chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the infraction occurs~~ An applicant for registration as a construction contractor shall submit an application under oath on a form to be provided by the department that must include the following information:

(a) the applicant's social security number;

(b) proof of compliance with workers' compensation laws;

(c) the I.R.S. employer identification number, if any; and

(d) the name and address of:

(i) each partner if the applicant is a firm or partnership;

(ii) the owner if the applicant is an individual proprietorship;

(iii) the corporate officers and registered agent if the applicant is a corporation; or

(iv) the manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company."

SECTION 4. SECTION 39-9-204, MCA, IS AMENDED TO READ:

"**39-9-204. Certificate of registration -- issuance -- duration ~~-- renewal -- suspension~~.** (1) The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) ~~If the department approves an application, it shall issue a certificate of registration to the applicant.~~ The department shall place the expiration date on the certificate. ~~Except as provided in subsection (3), the~~ The certificate is valid ~~until the earliest date of:~~

~~(a) 1 year~~ for 3 years~~; or~~

~~(b) the date the bond expires; or~~

~~(c) the date the workers' compensation or unemployment insurance expires or any applicable exemption terminates.~~

~~(3) The certificate issued under this section to an independent contractor is invalid on the date the contractor hires employees unless the contractor provides proof to the department of workers' compensation coverage for those employees.~~

~~(4) A contractor may supply a short-term bond or insurance policy to bring its registration period to the full 1 year.~~

~~(5) If a contractor's surety bond or other security has an unsatisfied judgment against it or it is canceled, the contractor's registration is automatically suspended on the effective date of the impairment or cancellation. The department shall give notice of the suspension to the contractor.~~"

SECTION 5. SECTION 39-9-206, MCA, IS AMENDED TO READ:

"**39-9-206. Fees -- education program.** (1) The department shall charge fees for:

(a) issuance, renewal, and reinstatement of certificates of registration; and

(b) changes of name, address, or business structure.

(2) The department shall set the fees by administrative rule. The fees shall cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include reproduction, travel, per diem, and administrative and legal support costs.

(3) The fees charged in subsection (1)(a) may not exceed ~~$80~~:

(a) $50 for the initial registration certificate; or

(b) $50 for the renewal or reinstatement of a registration certificate.

(4) The fees collected under this section must be deposited in the state special revenue account to the credit of the department for the administration and enforcement of this chapter.

(5) The department shall establish, cooperatively with representatives of the building industry, an industry and consumer information program, funded with 15% of the fees, to educate the building industry about the registration program and to educate the public regarding the hiring of building construction contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption may not exceed the fee charged for a certificate of registration."

SECTION 6. SECTION 39-9-207, MCA, IS AMENDED TO READ:

"**39-9-207. ~~Registration prerequisite to suit or lien claim~~ Contractor registration -- limiting liability.**

~~(1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain an action in any court of this state for the collection of compensation for the performance of any work or for breach of contract for which registration is required under this chapter without alleging and proving that the contractor was a registered contractor and held a current and valid certificate of registration at the time the contractor entered the contract for the performance of work.~~

~~(2) For the purposes of this section, the court may not find a contractor in compliance with the registration requirements of this chapter unless:~~

~~(a) the department has on file the information required by 39-9-202; and~~

~~(b) the contractor has a current bond or other security as required by 39-9-203.~~

~~(3) In determining whether a contractor is in compliance with the registration requirements of this chapter, the court shall consider the length of time during which the contractor did not hold a valid certificate of registration.~~

~~(4) A contractor may not bring or maintain a lien claim under Title 71, chapter 3, part 5, unless the contractor is registered at the time of entering into a contract.~~

~~(5)~~ A person, including a construction contractor, engaging the services of ~~another~~ a registered construction contractor is not liable as an employer under 39-71-405 for workers' compensation and unemployment insurance coverage or for wages and fringe benefits for the other registered construction contractor or for any employee of the other construction contractor ~~if the contractor verifies with the department that the other contractor with whom the contractor is contracting for services is registered as provided under this chapter~~."

SECTION 7. SECTION 39-9-211, MCA, IS AMENDED TO READ:

"**39-9-211. Exemptions.** This chapter does not apply:

(1) to an authorized representative of the United States government, the state of Montana, or any incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) to an officer of a court acting within the scope of office;

(3) to a public utility operating under the regulations of the public service commission or to a rural cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work incidental to its own business;

(4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit ~~when performed by an owner or lessee~~;

(5) to the sale or installation of finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of a site or reservation under the exclusive legal jurisdiction of the federal government;

(7) to a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the construction contractor;

(8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than ~~$500~~ $2,500 a job. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than ~~$500~~ $2,500 a job for the purpose of evasion of this chapter or otherwise. ~~The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor or is qualified to engage in the business of a contractor.~~

(9) ~~except when work is performed by a registered contractor,~~ to a ~~construction or operation incidental to the construction or repair:~~ farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;

~~(a)~~(10) ~~of irrigation and drainage ditches of~~ to an irrigation district or reclamation district;

~~(b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or~~

~~(c)~~(11) to an operation related to clearing or other work upon land in rural districts for fire prevention purposes;

~~(10)~~(12) to an owner who contracts for ~~a project with~~ work to be performed by a registered construction contractor, but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on the owner's property with the intention and for the purpose of promptly selling the improved property;

~~(11)~~(13) to ~~a person~~ an owner working on the ~~person's~~ owner's property, whether occupied by the

~~person~~ owner or not, ~~and a person working on the person's residence, whether owned by the person or not,~~ but this exemption does not apply to ~~a person~~ an owner who is otherwise covered by this chapter who constructs an improvement on the ~~person's~~ owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for at least the last 12 months;

~~(12)~~(14) to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

~~(13)~~(15) to ~~a licensed~~ an architect, ~~or~~ civil or professional engineer, or professional land surveyor, licensed in Montana and acting solely in a professional capacity;

~~(14)~~(16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

~~(15)~~(17) to a contract security company, licensed under Title 37, chapter 60, operating within the scope of the license; ~~or~~

~~(16)~~(18) to a person who engages in the activities regulated as an employee of a registered construction contractor with wages as the sole compensation or as an employee with wages as the sole compensation;

(19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire suppression or fire protection equipment;

(20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water well contractor;

(21) to an enrolled tribal member or an association, business, corporation, or other entity, at least 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely within the exterior boundaries of an Indian reservation;

(22) to a contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;

(23) to a person working on the person's own residence, if the residence is owned by a person other than the resident; or

(24) to an independent contractor who has no employees. However, an independent contractor may voluntarily elect to register under this chapter."

SECTION 8. SECTION 39-9-301, MCA, IS AMENDED TO READ:

"**39-9-301. Business practices -- ~~advertising --~~ penalty.** (1) Except as provided in 39-9-205, a person who has registered under one name as provided in this chapter may not engage in the business or act in the capacity of a construction contractor under any other name unless that name also is registered under this chapter.

~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters, papers, and documents that show a contractor's name or address must show the contractor's name and address as registered under this chapter.~~

~~(3) (a) The alphabetized listing of contractors appearing in the advertising section of directories, excluding telephone books, and all advertising must show the contractor's current registration number. However, signs on motor vehicles and on-premises signs do not constitute advertising under this section.~~

~~(b) All materials used to directly solicit business from retail customers who are not businesses must show a contractor's current registration number. A contractor may not use a false or expired registration number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not subject to this subsection.~~

~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to be filed provided in 39-9-203.~~

~~(5)~~(2) A construction contractor may not falsify a registration number and use it in connection with a solicitation or identification as a construction contractor. An individual construction contractor, partner, associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true name and address at all times while engaged in the business or capacity of a construction contractor or in activities related to a construction contractor.

~~(6)~~(3) (a) The finding of a violation of this section by the department at a hearing held in accordance with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more than $5,000, as determined by the department. The required hearing may be held by telephone or by videoconference. A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of this chapter.

(b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error."

SECTION 9. SECTION 39-9-303, MCA, IS AMENDED TO READ:

"39-9-303. **Department to compile and update list of registered** construction **contractors -- availability -- fee.** (1) The department shall compile a list of all construction contractors registered under this chapter and update the list at least bimonthly. The list is public information and must be available to the public upon request for a reasonable fee.

(2) The department shall inform a person, firm, or corporation whether a construction contractor is registered. The department shall provide the information without charge, except for a reasonable fee for any copies made."

SECTION 10. SECTION 39-9-401, MCA, IS AMENDED TO READ:

"**39-9-401. Violation -- infraction.** ~~(1)~~ It is a violation of this chapter and an infraction for any construction contractor to:

~~(a)~~(1) ~~advertise, offer to perform work, submit a bid, or~~ perform work as a construction contractor without being registered as required by this chapter;

~~(b)~~(2) ~~advertise, offer to perform work, submit a bid, or~~ perform work as a construction contractor when the construction contractor's registration is suspended; or

~~(c)~~(3) transfer a valid registration to an unregistered construction contractor or allow an unregistered construction contractor to work under a registration issued to another construction contractor.

~~(2) Each day that a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction.~~"

Section 11. Section 39-71-120, MCA, is amended to read:

"**39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under the contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business~~; and~~

~~(c) has received an exemption granted under 39-71-401(3)~~.

(2) An individual performing services for remuneration ~~who represents to the public that the individual is an independent contractor~~ is considered to be an ~~independent contractor and not an~~ employee under this chapter ~~unless the requirements of subsection (1) are met~~ UNLESS THE REQUIREMENTS OF SUBSECTION (1) ARE MET. ~~An individual representing to the public that the individual is an independent contractor may not make claims against an employing unit ANY PERSON FOR WHOM THE INDEPENDENT CONTRACTOR RENDERS SERVICE IN EXCHANGE FOR PAY OR ANY OTHER CONSIDERATION. The department may not take action against a person relying on a claim of independent contractor status pursuant to this subsection.~~

~~(3) The department may not adopt rules to implement this section.~~"

Section 12. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller as defined in 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided

under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey performing under a license issued by the board of horseracing from the time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in

negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

(3) (a) A sole proprietor, a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is ~~no~~ A $25 fee for the initial application. Any subsequent application RENEWAL must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department ~~or when the contracting parties agree to an independent contractor status~~, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) ~~The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions~~

~~approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption. When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains the status of an independent contractor until the independent contractor notifies the department of any change in status and provides a description of the independent contractor's present work status~~ THE EXEMPTION, IF APPROVED, REMAINS IN EFFECT FOR 3 YEARS FOLLOWING THE DATE OF THE DEPARTMENT'S APPROVAL. TO MAINTAIN THE INDEPENDENT CONTRACTOR STATUS, AN INDEPENDENT CONTRACTOR SHALL EVERY 3 YEARS SUBMIT A RENEWAL APPLICATION. A RENEWAL APPLICATION MUST BE SUBMITTED FOR ALL INDEPENDENT CONTRACTOR EXEMPTIONS APPROVED AS OF JULY 1, 1995, OR THEREAFTER. THE RENEWAL APPLICATION AND THE $25 RENEWAL APPLICATION FEE MUST BE RECEIVED BY THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO THE ANNIVERSARY DATE OF THE PREVIOUSLY APPROVED EXEMPTION.

(e) A person who ~~purposely~~ makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the

manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

~~**Section 4. Section 39-71-405, MCA, is amended to read:**~~

~~**"39-71-405. Liability of employer who contracts work out.** (1) An employer who contracts with a contractor or an independent contractor to have work performed of a kind which that is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such the employer is not liable for the payment of benefits under this chapter to the employees of the contractor or to the independent contractor if the contractor or independent contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.~~

~~(2) Where When an employer contracts to have any work to be done by a contractor other than or an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is not liable to pay all benefits under this chapter to the same~~

~~extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall not be construed to be casual employment even if the work contracted to be done is a part or process in the trade, business, occupation, or profession of the employer. Where When an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall may not come under that plan of compensation adopted by the employer.~~

~~(3) Where When an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where and the work so contracted to be done is casual employment as to such the employer, then the contractor shall become the is not an employer for the purposes of this chapter."~~

~~NEW SECTION. **Section 5. Fee refund.** The department of labor and industry shall refund all fees collected under the provisions of former 39-9-206.~~

NEW SECTION. **SECTION 13. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **Section 14. Repealer.** Sections 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, ~~39-9-101, 39-9-102, 39-9-103, 39-9-201,~~ 39-9-202, 39-9-203, ~~39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211, 39-9-301,~~ 39-9-302, ~~39-9-303, 39-9-304, 39-9-401,~~ 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, and 39-9-410, MCA, are repealed.

NEW SECTION. **Section 15. Effective date.** [This act] is effective July 1, 1997.

-END-

FREE CONFERENCE COMMITTEE

on House Bill 252
Report No. 1, April 19, 1997

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 252** (reference copy -- salmon) and recommend that **House Bill 252** be amended as follows:

1. Title, line 7.
Following: "~~REQUIREMENTS;~~"
Insert: ""REPEALING CERTAIN CONTRACTOR REGISTRATION REQUIREMENTS;"

2. Title, line 9.
Following: "ENFORCEMENT,"
Insert: "AND"

3. Title, line 10.
Following: "PROCEDURES"
Strike: ", AND PENALTY PROVISIONS"
Following: "REGISTRATION;"
Insert: "PROVIDING FOR A PENALTY OF UP TO $1,000 FOR CERTAIN VIOLATIONS OF THE CONSTRUCTION CONTRACTOR REGISTRATION LAWS; REQUIRING THAT ANY PENALTY COLLECTED BE DEPOSITED IN THE UNINSURED EMPLOYERS' FUND;"

4. Title, line 11.
Following: "INITIAL"
Insert: "2-YEAR"
Following: "MAXIMUM OF"
Strike: "$50"
Insert: "$70"

5. Title, line 12.
Following: "MAXIMUM OF"
Strike: "$50"
Insert: "$70"

FCCR #1
HB 252

ADOPT

AC HB 252-1

REJECT

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6. Title, line 14.
Following: "ROADS"
Insert: ", FOR LICENSED WATER WELL CONTRACTORS, FOR ENROLLED TRIBAL MEMBERS OR TRIBALLY-OWNED BUSINESSES, FOR CERTAIN PROPERTY OWNERS, FOR PROJECTS COSTING LESS THAN $2,500"

7. Title, line 17.
Following: "RENEWAL;"
Insert: "PROVIDING AN APPROPRIATION;"

8. Page 7, line 27.
Strike: "3"
Insert: "2"

9. Page 8, line 18 and line 19.
Strike: "$50"
Insert: "$70"

10. Page 9, lines 15 through 18.
Following: "person" on line 15
Strike: ", including" through the "registered"
Insert: "who, pursuant to an oral or written contract, engages a"
Following: "contractor" on line 16
Insert: "who is registered under this chapter on the date of the contract"
Following: "employer"
Insert: "for workers' compensation coverage"
Following: "39-71-405"
Strike: "for workers' compensation and"
Insert: ", for"
Following: "coverage" on line 17
Insert: ","
Following: "for" on line 17
Strike: remainder of line 17 through second "contractor" on line 18
Insert: ":
(1) the registered construction contractor;
(2) the employees of the registered construction contractor; or
(3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to fulfill a part of or all of the obligations of the oral or written contract of the registered construction contractor listed in subsection (1)"

11. Page 13, line 10.
Following: "**infraction**"
Insert: "**-- penalty -- disposition**"
Following: "~~(1)~~"

Insert: "(1)"

12. Page 13, line 12.
Strike: "(1)"
Insert: "(a)"
Renumber: subsequent subsections

13. Page 13.
Following: line 22
Insert: "(2)(a) A determination by the department of a violation of this section subjects the person who commits the violation to a penalty of up to $1,000, as determined by the department. A person who has been determined to have violated this section may request that a hearing be held in accordance with the Montana Administrative Procedures Act. The hearing may be held by telephone or video conference. An appeal of the hearing decision must be made in the same manner as prescribed in 39-51-2403 and 39-51-2404.

(b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.

(c) A penalty collected under this section must be deposited in the uninsured employers' fund established in 39-71-502."

14. Page 19.
Following: line 22
Insert: "NEW SECTION. **Section 15. Appropriation.** There is appropriated from the state special revenue account to the department of labor and industry up to $315,000 for the biennium ending June 30, 1999, for the purpose of administering the construction contractor registration program."
Renumber: subsequent section

And this FREE Conference Committee report be adopted.

For the House:

Rep. Simon, Chair

Rep. Cocchiarella

Rep. Molnar

For the Senate:

Senator Thomas, Chair

Senator Holden

Senator Shea

HOUSE BILL NO. 252

INTRODUCED BY MOLNAR, PROUSE, TASH, SLITER, BANKHEAD, BEAUDRY, WELLS, ARNOTT, ORR, JORE, HOLLAND, DEVANEY, MCGEE, CURTISS, KEENAN, BITNEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS AND INDEPENDENT CONTRACTORS; ~~REPEALING CONTRACTOR REGISTRATION REQUIREMENTS;~~ REPEALING CERTAIN CONTRACTOR REGISTRATION REQUIREMENTS; ELIMINATING BONDING REQUIREMENTS FOR CONTRACTORS; ~~REQUIRING THE REFUND OF CONTRACTOR REGISTRATION FEES;~~ ELIMINATING INVESTIGATORY, ENFORCEMENT, AND NOTICE AND APPEAL PROCEDURES~~, AND PENALTY PROVISIONS~~ RELATING TO CONTRACTOR REGISTRATION; PROVIDING FOR A PENALTY OF UP TO $500 FOR CERTAIN VIOLATIONS OF THE CONSTRUCTION CONTRACTOR REGISTRATION LAWS; REQUIRING THAT ANY PENALTY COLLECTED BE DEPOSITED IN THE UNINSURED EMPLOYERS' FUND; DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL 2-YEAR CERTIFICATE TO A MAXIMUM OF ~~$50~~ $70 AND THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM OF ~~$50~~ $70; PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES, FOR CONTRACTORS IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS, FOR LICENSED WATER WELL CONTRACTORS, FOR ENROLLED TRIBAL MEMBERS OR TRIBALLY OWNED BUSINESSES, FOR CERTAIN PROPERTY OWNERS, FOR PROJECTS COSTING LESS THAN $2,500, AND FOR INDEPENDENT CONTRACTORS WHO HAVE NO EMPLOYEES; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; PROVIDING FOR A $25 FEE FOR THE INITIAL EXEMPTION APPLICATION AND FOR EACH SUBSEQUENT RENEWAL; PROVIDING AN APPROPRIATION; AMENDING SECTIONS ~~39-71-118,~~ 39-9-101, 39-9-102, 39-9-201, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, 39-9-401, 39-71-120, AND 39-71-401, ~~AND 39-71-405,~~ MCA; REPEALING SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, ~~39-9-101, 39-9-102, 39-9-103, 39-9-201,~~ 39-9-202, 39-9-203, ~~39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211, 39-9-301,~~ 39-9-302, ~~39-9-303, 39-9-304, 39-9-401,~~ 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, AND 39-9-410, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM AFFECTS AN INDUSTRY IN MONTANA THAT HAS A HIGH NUMBER OF ACCIDENTS, RESULTING IN WORKERS' COMPENSATION RATES THAT

REFERENCE BILL: INCLUDES FREE CONFERENCE COMMITTEE REPORT DATED 4-19-97

ARE HIGHER THAN OTHER INDUSTRIES' AND CREATING A SITUATION THAT OFTEN RESULTS IN NONCOMPLIANCE WITH THE REQUIREMENTS OF THE WORKERS' COMPENSATION ACT AND THE UNEMPLOYMENT INSURANCE LAW; AND

WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM PROVIDES NEEDED STRUCTURE TO THE CONSTRUCTION INDUSTRY BY PROVIDING A MEANS TO DISTINGUISH, PRIOR TO AN ACCIDENT, THOSE PERSONS WHO QUALIFY AS INDEPENDENT CONTRACTORS AND THOSE EMPLOYERS WHO ARE REQUIRED TO PROVIDE WORKERS' COMPENSATION COVERAGE FOR THEIR EMPLOYEES; AND

WHEREAS, THE CONTRACTOR REGISTRATION LAW PROTECTS A CONTRACTOR FROM THE LIABILITIES FOR WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE OBLIGATIONS THAT EXIST FROM CONTRACTING WITH A CONTRACTOR WHO IS NOT IN COMPLIANCE WITH THOSE LAWS BY REMOVING THOSE LIABILITIES WHEN A CONTRACTOR CONTRACTS WITH A REGISTERED CONTRACTOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 39-71-118, MCA, is amended to read:~~

~~**"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term "employee" or "worker" means:~~

~~(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.~~

~~(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;~~

~~(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under~~

~~a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.~~

~~(d) an aircrew member or other person employed as a volunteer under 67-2-105;~~

~~(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):~~

~~(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and~~

~~(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.~~

~~(f) an inmate working in a federally certified prison industries program authorized under 53-1-301; and~~

~~(g) a person who is an enrolled member of a volunteer fire department as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1.~~

~~(2) The terms defined in subsection (1) do not include a person who is:~~

~~(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;~~

~~(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities; or~~

~~(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.~~

~~(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).~~

~~(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.~~

~~(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.~~

~~(5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, proprietorship, or limited liability company business.~~

~~(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.~~

~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.~~

~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.~~

~~(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).~~

~~(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.~~

~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter~~

~~following notification.~~

~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not less than $200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.~~

~~(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.~~

~~(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.~~

~~(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).~~

~~(9) For purposes of this section, an "employee or worker in this state" means:~~

~~(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;~~

~~(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;~~

~~(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or~~

~~(d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:~~

~~(i) nonresident employees are hired in Montana;~~

~~(ii) nonresident employees' wages are paid in Montana;~~

~~(iii) nonresident employees are supervised in Montana; and~~

~~(iv) business records are maintained in Montana.~~

~~(10) An insurer may require coverage for all nonresident employees of a Montana employer who~~

~~do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under subsection (9)(d).~~"

SECTION 1. SECTION 39-9-101, MCA, IS AMENDED TO READ:

"**39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors are competing fairly and in compliance with state laws."

SECTION 2. SECTION 39-9-102, MCA, IS AMENDED TO READ:

"**39-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "~~Contractor~~ Construction contractor" means a person, firm, or corporation that:

(a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works, or the installation or repair of roofing or siding; or

(b) in order to do work similar to that described in subsection (1)(a) upon the construction contractor's property, employs members of more than one trade on a single job or under a single building permit, except as otherwise provided.

(2) "Department" means the department of labor and industry.

~~(3) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole or in part.~~

~~(4) "Specialty contractor" means a contractor whose operations do not fall within the definition of general contractor.~~

~~(5) "Verification" means the receipt and duplication by a political subdivision of a contractor registration card that is current on its face.~~"

SECTION 3. SECTION 39-9-201, MCA, IS AMENDED TO READ:

"**39-9-201. Registration required -- ~~prohibited acts -- criminal penalty~~ application.** (1) ~~On or before July 1, 1996, each~~ Each construction contractor shall register with the department.

~~(2) It is a misdemeanor for a contractor to:~~

~~(a) advertise, offer to perform work, submit a bid, or perform work as a contractor:~~

~~(i) without being registered as required by this chapter; or~~

~~(ii) when the contractor's registration is suspended;~~

~~(b) use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required; or~~

~~(c) transfer a valid registration to an unregistered contractor to work under a registration issued to another contractor.~~

~~(3) The department may cause the criminal proceedings for a misdemeanor action under this chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the infraction occurs~~ An applicant for registration as a construction contractor shall submit an application under oath on a form to be provided by the department that must include the following information:

(a) the applicant's social security number;

(b) proof of compliance with workers' compensation laws;

(c) the I.R.S. employer identification number, if any; and

(d) the name and address of:

(i) each partner if the applicant is a firm or partnership;

(ii) the owner if the applicant is an individual proprietorship;

(iii) the corporate officers and registered agent if the applicant is a corporation; or

(iv) the manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company."

SECTION 4. SECTION 39-9-204, MCA, IS AMENDED TO READ:

"**39-9-204. Certificate of registration -- issuance -- duration ~~-- renewal -- suspension~~.** (1) The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) ~~If the department approves an application, it shall issue a certificate of registration to the applicant.~~ The department shall place the expiration date on the certificate. ~~Except as provided in subsection (3), the~~ The certificate is valid ~~until the earliest date of:~~

~~(a) 1 year~~ for ~~3~~ 2 years~~; or~~

~~(b) the date the bond expires; or~~

~~(c) the date the workers' compensation or unemployment insurance expires or any applicable exemption terminates.~~

~~(3) The certificate issued under this section to an independent contractor is invalid on the date the contractor hires employees unless the contractor provides proof to the department of workers' compensation coverage for those employees.~~

~~(4) A contractor may supply a short-term bond or insurance policy to bring its registration period to the full 1 year.~~

~~(5) If a contractor's surety bond or other security has an unsatisfied judgment against it or it is canceled, the contractor's registration is automatically suspended on the effective date of the impairment or cancellation. The department shall give notice of the suspension to the contractor.~~"

SECTION 5. SECTION 39-9-206, MCA, IS AMENDED TO READ:

"**39-9-206. Fees -- education program.** (1) The department shall charge fees for:

(a) issuance, renewal, and reinstatement of certificates of registration; and

(b) changes of name, address, or business structure.

(2) The department shall set the fees by administrative rule. The fees shall cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include reproduction, travel, per diem, and administrative and legal support costs.

(3) The fees charged in subsection (1)(a) may not exceed ~~$80~~:

(a) ~~$50~~ $70 for the initial registration certificate; or

(b) ~~$50~~$70 for the renewal or reinstatement of a registration certificate.

(4) The fees collected under this section must be deposited in the state special revenue account to the credit of the department for the administration and enforcement of this chapter.

(5) The department shall establish, cooperatively with representatives of the building industry, an industry and consumer information program, funded with 15% of the fees, to educate the building industry about the registration program and to educate the public regarding the hiring of building construction contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor

exemption may not exceed the fee charged for a certificate of registration."

SECTION 6. SECTION 39-9-207, MCA, IS AMENDED TO READ:

"**39-9-207. ~~Registration prerequisite to suit or lien claim~~ Contractor registration -- limiting liability.** ~~(1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain an action in any court of this state for the collection of compensation for the performance of any work or for breach of contract for which registration is required under this chapter without alleging and proving that the contractor was a registered contractor and held a current and valid certificate of registration at the time the contractor entered the contract for the performance of work.~~

~~(2) For the purposes of this section, the court may not find a contractor in compliance with the registration requirements of this chapter unless:~~

~~(a) the department has on file the information required by 39-9-202; and~~

~~(b) the contractor has a current bond or other security as required by 39-9-203.~~

~~(3) In determining whether a contractor is in compliance with the registration requirements of this chapter, the court shall consider the length of time during which the contractor did not hold a valid certificate of registration.~~

~~(4) A contractor may not bring or maintain a lien claim under Title 71, chapter 3, part 5, unless the contractor is registered at the time of entering into a contract.~~

~~(5)~~ A person~~, including a construction contractor,~~ engaging the services of another a registered WHO, PURSUANT TO AN ORAL OR WRITTEN CONTRACT, ENGAGES A construction contractor WHO IS REGISTERED UNDER THIS CHAPTER ON THE DATE OF THE CONTRACT is not liable as an employer FOR WORKERS' COMPENSATION COVERAGE under 39-71-405 ~~for workers' compensation and~~, FOR unemployment insurance coverage, or for wages and fringe benefits for ~~the other registered construction contractor or for any employee of the other construction contractor~~:

(1) THE REGISTERED CONSTRUCTION CONTRACTOR;

(2) THE EMPLOYEES OF THE REGISTERED CONSTRUCTION CONTRACTOR; OR

(3) ANY SUBSEQUENT SUBCONTRACTOR OR THE EMPLOYEES OF ANY SUBSEQUENT SUBCONTRACTOR ENGAGED TO FULFILL A PART OF OR ALL OF THE OBLIGATIONS OF THE ORAL OR WRITTEN CONTRACT OF THE REGISTERED CONSTRUCTION CONTRACTOR LISTED IN SUBSECTION (1)

~~if the contractor verifies with the department that the other contractor with whom the contractor is~~

~~contracting for services is registered as provided under this chapter~~."

SECTION 7. SECTION 39-9-211, MCA, IS AMENDED TO READ:

"**39-9-211. Exemptions.** This chapter does not apply:

(1) to an authorized representative of the United States government, the state of Montana, or any incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) to an officer of a court acting within the scope of office;

(3) to a public utility operating under the regulations of the public service commission or to a rural cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work incidental to its own business;

(4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit ~~when performed by an owner or lessee~~;

(5) to the sale or installation of finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of a site or reservation under the exclusive legal jurisdiction of the federal government;

(7) to a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the construction contractor;

(8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than ~~$500~~ $2,500 a job. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than ~~$500~~ $2,500 a job for the purpose of evasion of this chapter or otherwise. ~~The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor or is qualified to engage in the business of a contractor.~~

(9) ~~except when work is performed by a registered contractor,~~ to a ~~construction or operation~~

~~incidental to the construction or repair:~~ farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;

~~(a)~~(10) ~~of irrigation and drainage ditches of~~ to an irrigation district or reclamation district;

~~(b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or~~

~~(c)~~(11) to an operation related to clearing or other work upon land in rural districts for fire prevention purposes;

~~(10)~~(12) to an owner who contracts for ~~a project with~~ work to be performed by a registered construction contractor, but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on the owner's property with the intention and for the purpose of promptly selling the improved property;

~~(11)~~(13) to ~~a person~~ an owner working on the ~~person's~~ owner's property, whether occupied by the ~~person~~ owner or not, ~~and a person working on the person's residence, whether owned by the person or not,~~ but this exemption does not apply to ~~a person~~ an owner who is otherwise covered by this chapter who constructs an improvement on the ~~person's~~ owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for at least the last 12 months;

~~(12)~~(14) to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

~~(13)~~(15) to ~~a licensed~~ an architect, ~~or~~ civil or professional engineer, or professional land surveyor, licensed in Montana and acting solely in a professional capacity;

~~(14)~~(16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

~~(15)~~(17) to a contract security company, licensed under Title 37, chapter 60, operating within the scope of the license; ~~or~~

~~(16)~~(18) to a person who engages in the activities regulated as an employee of a registered construction contractor with wages as the sole compensation or as an employee with wages as the sole compensation;

(19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire suppression or fire protection equipment;

(20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water well contractor;

(21) to an enrolled tribal member or an association, business, corporation, or other entity, at least 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely within the exterior boundaries of an Indian reservation;

(22) to a contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;

(23) to a person working on the person's own residence, if the residence is owned by a person other than the resident; or

(24) to an independent contractor who has no employees. However, an independent contractor may voluntarily elect to register under this chapter."

SECTION 8. SECTION 39-9-301, MCA, IS AMENDED TO READ:

"**39-9-301. Business practices -- ~~advertising --~~ penalty.** (1) Except as provided in 39-9-205, a person who has registered under one name as provided in this chapter may not engage in the business or act in the capacity of a construction contractor under any other name unless that name also is registered under this chapter.

~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters, papers, and documents that show a contractor's name or address must show the contractor's name and address as registered under this chapter.~~

~~(3) (a) The alphabetized listing of contractors appearing in the advertising section of directories, excluding telephone books, and all advertising must show the contractor's current registration number. However, signs on motor vehicles and on-premises signs do not constitute advertising under this section.~~

~~(b) All materials used to directly solicit business from retail customers who are not businesses must show a contractor's current registration number. A contractor may not use a false or expired registration number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not subject to this subsection.~~

~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to be filed provided in 39-9-203.~~

~~(5)~~(2) A construction contractor may not falsify a registration number and use it in connection with a solicitation or identification as a construction contractor. An individual construction contractor, partner, associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true

name and address at all times while engaged in the business or capacity of a construction contractor or in activities related to a construction contractor.

~~(6)~~(3) (a) The finding of a violation of this section by the department at a hearing held in accordance with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more than $5,000, as determined by the department. The required hearing may be held by telephone or by videoconference. A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of this chapter.

(b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error."

SECTION 9. SECTION 39-9-303, MCA, IS AMENDED TO READ:

"**39-9-303. Department to compile and update list of registered construction contractors -- availability -- fee.** (1) The department shall compile a list of all construction contractors registered under this chapter and update the list at least bimonthly. The list is public information and must be available to the public upon request for a reasonable fee.

(2) The department shall inform a person, firm, or corporation whether a construction contractor is registered. The department shall provide the information without charge, except for a reasonable fee for any copies made."

SECTION 10. SECTION 39-9-401, MCA, IS AMENDED TO READ:

"**39-9-401. Violation -- infraction -- PENALTY -- DISPOSITION.** ~~(1)~~(1) It is a violation of this chapter and an infraction for any construction contractor to:

~~(a)~~(1)(A) ~~advertise, offer to perform work, submit a bid, or~~ perform work as a construction contractor without being registered as required by this chapter;

~~(b)~~(2)(B) ~~advertise, offer to perform work, submit a bid, or~~ perform work as a construction contractor when the construction contractor's registration is suspended; or

~~(c)~~(3)(C) transfer a valid registration to an unregistered construction contractor or allow an unregistered construction contractor to work under a registration issued to another construction contractor.

~~(2) Each day that a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor~~

~~is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction.~~

(2) (A) A DETERMINATION BY THE DEPARTMENT OF A VIOLATION OF THIS SECTION SUBJECTS THE PERSON WHO COMMITS THE VIOLATION TO A PENALTY OF UP TO $500, AS DETERMINED BY THE DEPARTMENT. A PERSON WHO HAS BEEN DETERMINED TO HAVE VIOLATED THIS SECTION MAY REQUEST THAT A HEARING BE HELD IN ACCORDANCE WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT. THE HEARING MAY BE HELD BY TELEPHONE OR VIDEO CONFERENCE. AN APPEAL OF THE HEARING DECISION MUST BE MADE IN THE SAME MANNER AS PRESCRIBED IN 39-51-2403 AND 39-51-2404.

(B) A PENALTY UNDER THIS SECTION DOES NOT APPLY TO A VIOLATION THAT IS DETERMINED TO BE AN INADVERTENT ERROR.

(C) A PENALTY COLLECTED UNDER THIS SECTION MUST BE DEPOSITED IN THE UNINSURED EMPLOYERS' FUND ESTABLISHED IN 39-71-502."

Section 11. Section 39-71-120, MCA, is amended to read:

"**39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under the contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business~~; and~~

~~(c) has received an exemption granted under 39-71-401(3)~~.

(2) An individual performing services for remuneration ~~who represents to the public that the individual is an independent contractor~~ is considered to be an ~~independent contractor and not an~~ employee under this chapter ~~unless the requirements of subsection (1) are met~~ UNLESS THE REQUIREMENTS OF SUBSECTION (1) ARE MET. ~~An individual representing to the public that the individual is an independent contractor may not make claims against an employing unit~~ ANY PERSON FOR WHOM THE INDEPENDENT CONTRACTOR RENDERS SERVICE IN EXCHANGE FOR PAY OR ANY OTHER CONSIDERATION. ~~The department may not take action against a person relying on a claim of independent contractor status pursuant to this subsection.~~

~~(3) The department may not adopt rules to implement this section.~~"

Section 12. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller as defined in 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or free-lance correspondent

if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey performing under a license issued by the board of horseracing from the time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company

for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

(3) (a) A sole proprietor, a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is ~~no~~ A $25 fee for the initial application. Any subsequent application RENEWAL must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department ~~or when the contracting parties agree to an independent contractor status~~, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) ~~The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption. When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains the status of an independent contractor until the independent contractor notifies the department of any change in status and provides a description of the independent contractor's present work status~~ THE EXEMPTION, IF APPROVED, REMAINS IN EFFECT FOR 3 YEARS FOLLOWING THE DATE OF THE DEPARTMENT'S APPROVAL. TO MAINTAIN THE INDEPENDENT CONTRACTOR STATUS, AN INDEPENDENT CONTRACTOR SHALL EVERY 3 YEARS SUBMIT A RENEWAL

APPLICATION. A RENEWAL APPLICATION MUST BE SUBMITTED FOR ALL INDEPENDENT CONTRACTOR EXEMPTIONS APPROVED AS OF JULY 1, 1995, OR THEREAFTER. THE RENEWAL APPLICATION AND THE $25 RENEWAL APPLICATION FEE MUST BE RECEIVED BY THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO THE ANNIVERSARY DATE OF THE PREVIOUSLY APPROVED EXEMPTION.

(e) A person who ~~purposely~~ makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

~~**Section 4.** Section 39-71-405, MCA, is amended to read:~~

~~**"39-71-405. Liability of employer who contracts work out.** (1) An employer who contracts with a contractor or an independent contractor to have work performed of a kind which that is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such the employer is not liable for the payment of benefits under this chapter to the employees of the contractor or to the independent contractor if the contractor or independent contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.~~

~~(2) Where When an employer contracts to have any work to be done by a contractor other than or an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is not liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall not be construed to be casual employment even if the work contracted to be done is a part or process in the trade, business, occupation, or profession of the employer. Where When an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall may not come under that plan of compensation adopted by the employer.~~

~~(3) Where When an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where and the work so contracted to be done is casual employment as to such the employer, then the contractor shall become the is not an employer for the purposes of this~~

~~chapter."~~

~~NEW SECTION. **Section 5. Fee refund.** The department of labor and industry shall refund all fees collected under the provisions of former 39-9-206.~~

NEW SECTION. **SECTION 13. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **Section 14. Repealer.** Sections 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, ~~39-9-101, 39-9-102, 39-9-103, 39-9-201,~~ 39-9-202, 39-9-203, ~~39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211, 39-9-301,~~ 39-9-302, ~~39-9-303, 39-9-304, 39-9-401,~~ 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, and 39-9-410, MCA, are repealed.

NEW SECTION. **SECTION 15. APPROPRIATION.** THERE IS APPROPRIATED FROM THE STATE SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF LABOR AND INDUSTRY UP TO $315,000 FOR THE BIENNIUM ENDING JUNE 30, 1999, FOR THE PURPOSE OF ADMINISTERING THE CONSTRUCTION CONTRACTOR REGISTRATION PROGRAM.

NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 1997.

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